

W00A

FILED

SID J. WHITE

MAR 24 1992

CLERK, SUPREME COURT

By [Signature]  
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v. -

CASE NO. 78,901

ARTHUR FORBES,

Respondent.

\_\_\_\_\_ /

PETITIONER'S BRIEF ON THE MERITS

ROBERT A. BUTTERWORTH  
ATTORNEY GENERAL

BRADLEY R. BISCHOFF  
ASSISTANT ATTORNEY GENERAL  
FLORIDA BAR NO. 0714224

DEPARTMENT OF LEGAL AFFAIRS  
THE CAPITOL  
TALLAHASSEE, FL 32399-1050  
(904) 488-0600

COUNSEL FOR PETITIONER

TABLE OF CONTENTS

	<u>PAGE(S)</u>
TABLE OF CONTENTS	i
TABLE OF CITATIONS	ii
PRELIMINARY STATEMENT	1
STATEMENT OF THE CASE AND FACTS	2
SUMMARY OF ARGUMENT	3
ARGUMENT	4

ISSUE

WHETHER SECTION 775.084(1)(a)1, FLORIDA  
STATUTES (SUPP. 1988), WHICH DEFINES  
HABITUAL FELONY OFFENDERS AS THOSE WHO  
HAVE "PREVIOUSLY BEEN CONVICTED OF TWO  
OR MORE FELONIES," REQUIRES THAT EACH  
OF THE FELONIES BE COMMITTED AFTER  
CONVICTION FOR THE IMMEDIATELY PREVIOUS  
OFFENSE?

CONCLUSION	5
CERTIFICATE OF SERVICE	5

TABLE OF CITATIONS

<u>CASES</u>	<u>PAGE(S)</u>
<u>Forbes v. State,</u> 16 FLW D 2778 (Fla. 1st DCA, Oct. 25, 1991)	2
<u>State v. Barnes,</u> 17 FLW S119 (Fla. February 20, 1992) (rehearing pending)	4
 <u>OTHER AUTHORITY</u>	
§775.084(1)(a)1, Fla. Stat. (Supp. 1988)	2, 4

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v.

CASE NO. 78, 901

ARTHUR FORBES,

Respondent.

---

PETITIONER'S BRIEF ON THE MERITS

PRELIMINARY STATEMENT

Petitioner, the State of Florida, will be referred to herein as either "Petitioner" or "the State". Respondent, Arthur Forbes, defendant below, will be referred to herein as "Respondent". References to the record on appeal will be referred to herein by the symbol "R" followed by the appropriate page number(s).

STATEMENT OF THE CASE AND FACTS

Respondent was sentenced as a habitual felony offender on April 25, 1990, based on, inter alia, two prior felony convictions, all of which had been entered on the same day (R 53, 54). On appeal, the First District Court of Appeal reversed Respondent's sentence. Forbes v. State, 16 FLW D 2778 (Fla. 1st DCA, Oct. 25, 1991). Thereafter Petitioner moved to certify the following question as one of great public importance:

WHETHER SECTION 775.084(1)(a)1, FLORIDA STATUTES (SUPP. 1988), WHICH DEFINES HABITUAL FELONY OFFENDERS AS THOSE WHO HAVE "PREVIOUSLY BEEN CONVICTED OF TWO OR MORE FELONIES," REQUIRES THAT EACH OF THE FELONIES BE COMMITTED AFTER CONVICTION FOR THE IMMEDIATELY PREVIOUS OFFENSE?

Petitioner's motion was denied on November 4, 1991.

Notice to invoke this Court's discretionary jurisdiction was timely filed on November 6, 1991. Petitioner filed a jurisdictional brief on November 19, 1991, and this Court accepted jurisdiction and issued a briefing schedule on March 2, 1992.

SUMMARY OF ARGUMENT

Due to the brevity of the argument herein, a formal summary of the argument will be omitted.

ARGUMENT

ISSUE

WHETHER SECTION 775.084(1)(a)1, FLORIDA STATUTES (SUPP. 1988), WHICH DEFINES HABITUAL FELONY OFFENDERS AS THOSE WHO HAVE "PREVIOUSLY BEEN CONVICTED OF TWO OR MORE FELONIES," REQUIRES THAT EACH OF THE FELONIES BE COMMITTED AFTER CONVICTION FOR THE IMMEDIATELY PREVIOUS OFFENSE?


The question certified in the instant case was recently answered by this Court in the negative in State v. Barnes, 17 FLW S119 (Fla. February 20, 1992) (rehearing pending), attached hereto. It is settled, therefore, that Respondent's habitual felony offender sentence based on prior felony convictions entered on the same day is a legal sentence.

CONCLUSION

Petitioner respectfully urges this Honorable Court to reverse the decision of the First District Court of Appeal below and reinstate Respondent's habitual felony offender sentence.

Respectfully submitted,

ROBERT A. BUTTERWORTH  
ATTORNEY GENERAL

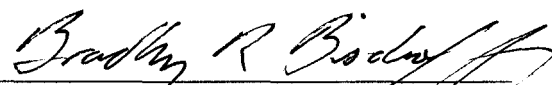
  
BRADLEY R. BISCHOFF  
ASSISTANT ATTORNEY GENERAL  
FLORIDA BAR NO. 0714224

DEPARTMENT OF LEGAL AFFAIRS  
THE CAPITOL  
TALLAHASSEE, FL 32399-1050  
(904) 488-0600

COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing brief has been furnished by U.S. Mail to Kathryn L. Sands, Kathryn L. Sands, P.A., 353 East Forsyth Street, Jacksonville, Florida 32202, this 24<sup>th</sup> day of March, 1992.

  
Bradley R. Bischoff  
Assistant Attorney General