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FILED

SID J. WHITE

APR 27 1992

CLERK, SUPREME COURT.

By Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

DENNIS BUCKHALTER

Petitioner,

v.

CASE NO. 78,983

STATE OF FLORIDA,

Respondent.

_____ /

RESPONDENT'S BRIEF ON THE MERITS

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SUMMARY OF ARGUMENT

Since petitioner concedes that this court has held that sentences for first degree felonies punishable by life are subject to enhancement under the habitual offender act, the district court decision should be affirmed.

ARGUMENT

THE DISTRICT COURT DECISION THAT
FIRST DEGREE FELONIES PUNISHABLE BY
LIFE ARE SUBJECT TO ENHANCEMENT
UNDER THE HABITUAL OFFENDER ACT
SHOULD BE AFFIRMED.

Petitioner, Dennis Buckhalter, concedes in his merits brief that this court held in *Burdick v. State*, 17 FLW S88 (Fla. Feb. 6, 1992), that sentences for first degree felonies punishable by life are subject to enhancement under the habitual offender act. Buckhalter is making the same argument as the petitioner did in *Burdick*. In *Burdick*, this court stated as follows:

Burdick concludes that because the district courts of appeal have held that life felonies are not subject to habitual offender enhancement, [citations omitted] neither are first-degree felonies punishable by life imprisonment. We disagree.

* * *

Clearly, the legislature intended first degree felonies punishable by life imprisonment to be punished more severely than ordinary first-degree felonies. However, if first-degree felonies punishable by life imprisonment were not subject to enhancement under the habitual offender statute, then defendants convicted of first-degree felonies who were sentenced under the habitual offender statute would potentially receive harsher sentences than defendants convicted of first-degree felonies punishable by life who received guidelines sentences.


The above rationale is sound and this court's precedent in *Burdick* should be followed in the instant case.

CONCLUSION

Based on the arguments and authorities presented herein, Respondent respectfully requests this honorable court to affirm the district court decision in this cause.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Respondent's Brief on the Merits has been furnished by mail to Brynn Newton, Assistant Public Defender, petitioner, at 112 Orange Avenue, Suite A, Daytona Beach, Florida 32114, this 29th day of April, 1992.



JAMES N. CHARLES
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