FILED
SID J. WHITE
MAY 29 1992
CLERK, SUPREME COURT
By
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v. CASE NO. 79,883

ROBERT GLOVER,

Respondent.

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# JURISDICTIONAL BRIEF OF RESPONDENT

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SECOND JUDICIAL CIRCUIT

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IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

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ROBERT GLOVER,

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_____/

## JURISDICTIONAL BRIEF OF RESPONDENT

### I PRELIMINARY STATEMENT

Respondent, ROBERT GLOVER, was the defendant in the trial court and appellant in the First District Court of Appeal. Petitioner, the State of Florida, was the prosecuting authority and appellee in the courts below. The parties will be referred to as they appear before this Court.

A copy of the District Court's decision is attached hereto and will be referred to as "A."

## II STATEMENT OF THE CASE AND FACTS

On direct appeal to the First District Court of Appeal, respondent challenged his habitual offender sentences for attempted first degree murder with a firearm, a life felony, and robbery with a firearm, a first degree felony punishable by life. The district court reversed his sentence for attempted murder with a firearm, holding that Section 775,084, Florida Statutes, makes no provision for habitual offender enhancement of a life felony. The court affirmed the habitual offender sentence for robbery with a firearm on the authority of Burdick v. State, 17 FLW S88 (Fla. Feb. 6, 1992) (A-1).

## III SUMMARY OF ARGUMENT

Respondent concurs with petitioner that the opinion of the court below conflicts with the decision of the Third District Court of Appeal in Lamont v. State, 17 FLW D507 (Fla. 3d DCA Feb. 18, 1992).

## IV ARGUMENT

ISSUE PRESENTED

THE DECISION OF THE FIRST DISTRICT COURT OF APPEAL IN THE INSTANT CASE EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF THE THIRD DISTRICT COURT OF APPEAL IN LAMONT V. STATE, 17 FLW D507 (Fla. 3d DCA Feb. 18, 1992), ON THE SAME QUESTION OF LAW.

The district court in the instant case held, consistent with prior decisions, that Section 775.084, Florida Statutes, makes no provision for habitual offender enhancement of a life felony. Accord, Gholston v. State, 589 So.2d 307 (Fla. 1st DCA 1991), discretionary review pending, Case No. 79,152; Sibley v. State, 586 So.2d 1245 (Fla. 1st DCA 1991); Johnson v. State, 568 So.2d 519 (Fla. 1st DCA 1990). The court noted that its decision conflicted with that of the Third District, in Lamont v. State, 17 FLW D507 (Fla. 3d DCA Feb. 18, 1992), wherein the court held that life felonies are subject to the provisions of the habitual offender statute. ~~See also~~, Pearson v. State, 17 FLW D905 (Fla. 3d DCA April 7, 1992).

The issue presented in this case is currently before this Court in Gholston and Lamont. This Court has jurisdiction to review the instant case based on express and direct conflict.

## V CONCLUSION

Based upon the foregoing, Respondent concurs that this Court has jurisdiction to review the instant decision based on express and direct conflict with a decision of another district court of appeal.

Respectfully submitted,

NANCY DANIELS
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

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**ATTORNEY FOR RESPONDENT**

## CERTIFICATE OF SERVICE

**I HEREBY** CERTIFY that a copy of the foregoing Jurisdictional Brief of Respondent has been furnished by hand-delivery to Ms. Andrea England, Assistant Attorney General, The Capitol, Tallahassee, Florida, 32302; and a copy has been mailed to respondent, Mr. Robert Glover, #724374, Cross City Correctional Inst., Post Office Box 1500, **MB-804**, Cross City, Florida, **32628**, on this 29th day of May, 1992.

Paula S. Saunders
**PAULA S. SAUNDERS**

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v. CASE NO. 79,883

ROBERT GLOVER,

Respondent.

_____/

A P P E N D I X

TO

JURISDICTIONAL BRIEF OF RESPONDENT

IN THE DISTRICT COURT OF APPEAL

FIRST DISTRICT, STATE OF **FLORIDA**

| | |
|---|---|
| **ROBERT GLOVER,** | * NOT FINAL UNTIL TIME EXPIRES TO |
| Appellant, | * FILE MOTION FOR REHEARING AND * DISPOSITION THEREOF IF FILED. |
| v. | * CASE NO. 91-882 |
| STATE OF FLORIDA, | * |
| Appellee. | * |

Opinion filed April 15, 1992.

Appeal from the Circuit Court for Taylor County
John Peach, Judge.

Nancy Daniels, Public Defender; Nancy L. Showalter, Assistant Public Defender, for appellant.

Robert A. Butterworth, Attorney General; Andrea D. England,, Assistant Attorney General, for **appellee.**

**KAHN,** J.

Appellant Robert Glover takes issue with his habitual offender sentences for 1) conviction of attempted first degree murder with a firearm, a **life** felony, and 2) conviction of robbery with a firearm, a first degree felony punishable by a term of years not exceeding life imprisonment.

This court has previously held that section 775.084, Florida Statutes, makes no provision for habitual offender enhancement of a life felony. Johnson v. State, 568 So.2d 519 (Fla. 1st DCA 1990); Gholston v. State, 589 So.2d 307 (Fla. 1991). The Third District, in Lamont v. State, 17 F.L.W. D507 (Fla. 3d DCA, en banc Feb. 18, 1992), has disagreed. The Lamont court reasoned that merely because the sentencing provisions of the habitual offender statute, sections 775.084(4)(a) and (b), do not specifically provide for enhanced sentencing where the subject conviction is a life felony, the act as a whole does apply to life felonies, since the habitual offender criteria of section 775.084(1) may apply to any felony conviction, regardless of degree, so long as the offender otherwise meets the criteria. set out in the statute. The Lamont court also points to subsection 4(e) of the statute, providing that a habitual felony offender sentence is not subject to the sentencing guidelines, Chapter 921, Florida Statutes, to parole, Chapter 947, Florida Statutes, nor to gain time granted by the Department of Corrections, with the exception of a limited amount of incentive gain time. Nothing in the statute indicates that subsection 4(e) would not apply to a life felon, properly'habitualized under section 775.084(1). This argument is not altogether lacking in appeal. We must, however, follow the decisions of this court, and accordingly we vacate Glover's habitual offender sentence for a life felony and remand this portion of the case to the trial court for resentencing.