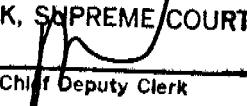


045
FILED

SID J. WHITE

MAR 6 1992

CLERK, SUPREME COURT

BY 
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

WILLIAM C. SNEAD,

Petitioner,

v.

CASE NO. 80,067

STATE OF FLORIDA,

Respondent.

ON DISCRETIONARY REVIEW FROM THE DISTRICT COURT OF APPEAL,
FIFTH DISTRICT

RESPONDENT'S JURISDICTIONAL BRIEF

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

NANCY RYAN
ASSISTANT ATTORNEY GENERAL
Fla. Bar #765910
210 N. Palmetto Ave.
Suite 447
Daytona Beach, FL 32114
(904) 238-4990

COUNSEL FOR RESPONDENT

TABLE OF CONTENTS

PAGES:

TABLE OF AUTHORITIES ii
SUMMARY OF ARGUMENT 1

ARGUMENT

THIS COURT SHOULD DECLINE TO
EXERCISE ITS DISCRETIONARY
JURISDICTION IN THIS MATTER;
PETITIONER RAISES A QUESTION
ALREADY RESOLVED BY THIS COURT..2

CONCLUSION.....,/, 4
CERTIFICATE OF SERVICE. 4

TABLE OF AUTHORITIES

<u>CASES :</u>	<u>PAGES :</u>
<u>Lambert v. State,</u> 545 So.2d 838 (Fla. 1989).....	2, 3
<u>Poore v. State,</u> 531 So.2d 161 (Fla. 1988).....	3
<u>Scott v. State,</u> 550 So.2d 111 (Fla. 4th DCA 1989).....	1, 2
<u>Williams v. State,</u> 581 So.2d 144 (Fla. 1991).....	2, 3
 <u>OTHER AUTHORITIES:</u>	
§948.06(1), Fla.Stat.....	3

SUMMARY OF ARGUMENT

The petitioner argues that the Fifth District Court's decision in this case is in direct and express conflict with the Fourth District Court's decision in Scott v. State, 550 So.2d 111 (Fla. 4th DCA 1989). The state submits that Scott is inconsistent with a 1991 decision of this court, and that the district court's decision in this case is in accord with this court's current caselaw. This court should accordingly decline to exercise its discretion to review this matter.

ARGUMENT

THIS COURT SHOULD DECLINE TO EXERCISE ITS DISCRETIONARY JURISDICTION IN THIS MATTER; PETITIONER RAISES A QUESTION ALREADY RESOLVED BY THIS COURT.

The petitioner, William Snead, seeks review of the decision of the Fifth District Court of Appeal in this case, alleging that it is in direct **and** express conflict with the decision of the Fourth District Court of Appeal in Scott v. State, 550 So.2d 111 (Fla. 4th DCA 1989). The state submits that Scott was effectively superseded by this court's decision in Williams v. State, 581 So.2d 144 (Fla. 1991), that the district court's decision in this case is consistent with Williams, and that this court need not and should not exercise its discretion to grant review in this case.

The court in Scott noted that were it not for this court's then-recent decision in Lambert v. State, 545 So.2d 838 (Fla. 1989), it would have affirmed the trial court's order revoking probation and imposing a habitual offender sentence, for two reasons: first, that a habitual offender sentence after revocation is a collateral consequence of the defendant's guilty plea, and accordingly he need not be advised of that potential consequence, and second, that after revocation a defendant may receive any sentence he could originally have received. 550 So.2d at 112. However, the court reversed, reading Lambert to preclude any sentence other than a guidelines sentence with a one-cell bump after revocation of probation. *Id.*

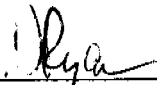
As the Fifth District Court correctly noted in the opinion issued in this case, this court's decision in *Williams v. State*, 581 So.2d 144 (Fla. 1991) established that the trial courts are not limited by the rule of Lambert after revocation, when their reason for imposing a sentence greater than that allowed by the one-cell bump existed before the defendant was granted probation. 581 So.2d at 145-6. Lambert is an exception to the general rule, which is that after revocation of probation a defendant may receive any sentence he could have received before the grant of probation. §948.06(1), Fla.Stat.; *Poore v. State*, 531 So.2d 161, 164 (Fla. 1988). Lambert is inapplicable in this case, since the convictions the trial court relied on when habitualizing Mr. Snead in 1991 both predated his 1990 probation. Williams, supra. This court accordingly need not and should not exercise its discretion to grant review in this case.

CONCLUSION

The Respondent requests this court to decline to exercise its discretionary power to review this matter.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL




NANCY RYAN
ASSISTANT ATTORNEY GENERAL
FLA. BAR # 765910
210 N. Palmetto Avenue
Suite 447
Daytona Beach, FL 32114
(904) 238-4990

COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing Jurisdictional Brief has been delivered by hand to Assistant Public Defender Sophia B. Ehringer at 112-A Orange Avenue, Daytona Beach, Florida 32114, this 2d day of ~~June~~, 1992.

^{July}


NANCY RYAN
Assistant Attorney General