

No Reg Case

087
FILED

SID J. WHITE

JAN 20 1993

CLERK, SUPREME COURT.

By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

CASE NO. 80,488

BENNIE LEE PEARSON,
Petitioner/Appellant,

vs.

THE STATE OF FLORIDA,
Respondent/Appellee.

ON PETITION FOR DISCRETIONARY REVIEW

BRIEF ON THE MERITS OF RESPONDENT/APPELLEE

ROBERT A. BUTTERWORTH
Attorney General
Tallahassee, Florida

✓
CHARLES M. FAHLBUSCH
Assistant Attorney General
Florida Bar No. 0191948
Department of Legal Affairs
4000 Hollywood Blvd.,
Suite 505-5
Hollywood, FL 33021
(305) 985-4588

TABLE OF CONTENTS

PRELIMINARY STATEMENT 1
ISSUE PRESENTED FOR REVIEW	2
SUMMARY OF THE ARGUMENT	3
ARGUMENT	4
CONCLUSION	4
CERTIFICATE OF SERVICE	6

TABLE OF CITATIONS

<u>CASE</u>	<u>PAGE</u>
<u>Lamont v. State</u> , 597 So.2d 823 (Fla. 3d DCA 1992).....	3,4
 <u>STATUTE</u>	
F.S. §775.084 ((1989).....	4

PRELIMINARY STATEMENT

The Petitioner, BENNIE LEE PEARSON, was the appellant in the court below and the defendant in the Circuit Court. The Respondent, THE STATE OF FLORIDA, was the appellee in the District Court and the prosecution in the trial court. The parties will be referred to, in this brief, as they stand before this court. The symbol "App." will refer to the Appendix to Appellant's Jurisdictional Brief. All emphasis is supplied unless otherwise indicated.

ISSU PRESENTED FOR VIEW

WHETHER THE DEFENDANT, CONVICTED OF A
LIFE FELONY, COULD PROPERLY BE SENTENCED
AS A HABITUAL OFFENDER?

SUMMARY OF THE ARGUMENT

It appears that the decision in this case, insofar as it relies on Lamont v. State, 597 So.2d 823 (Fla. 3d DCA 1992), has been quashed by this court in Lamont v. State, 18 F.L.W. S5 (Fla. December 24, 1992).

ARGUMENT

WHETHER THE DEFENDANT, CONVICTED OF A
LIFE FELONY, COULD PROPERLY BE SENTENCED
AS A HABITUAL OFFENDER?

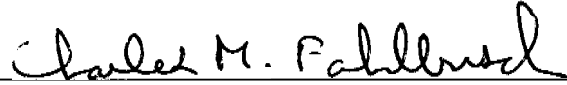
It appears that the decision in this case, insofar as it holds, based on Lamont v. State, 597 So.2d 823 (Fla. 3d DCA 1992), that life felonies are subject to enhancement under the habitual offender statute, F.S. §775.084 ((1989), has been quashed by this court in Lamont v. State, 18 F.L.W. S5 (Fla. December 24, 1992).

CONCLUSION

Based upon the foregoing, it appears that that portion of the opinion of the Third District which relies on Larnont v. State, 597 So.2d 823 (Fla. 3d DCA 1992) for the proposition that life felonies may be enhanced under the Habitual Offender Statute must be quashed and remanded for further proceedings. The Opinion should otherwise be affirmed.

Respectfully submitted,


ROBERT A. BUTTERWORTH
Attorney General



CHARLES M. FAHLBUSCK
Assistant Attorney General
Florida Bar No. 0191948
Department of Legal Affairs
4000 Hollywood Blvd.,
Suite 505-S
Hollywood, FL 33021
(305) 985-4788

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing BRIEF ON THE MERITS OF RESPONDENT/APPELLEE was furnished to SHERYL J. LOWENTHAL, Special Assistant Public Defender, 2600 Douglas Road, Suite 911, Coral Gables, Florida 33134 on this 19th day of January, 1993.


CHARLES M. FAHLBUSCH
Assistant Attorney General