

**IN THE CIRCUIT COURT
OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CRIMINAL DIVISION**

STATE OF FLORIDA

CASE Nos. 91-11370 CF and 92-1942 CF

vs.

CHRISTOPHER REINHARDT

_____ /

**DEFENDANT REINHARDT'S MOTION TO CORRECT
SENTENCE MADE PURSUANT TO RULE 3.800 FLORIDA
RULES OF CRIMINAL PROCEDURE**

COMES NOW, the Defefendant, CHRISTOPHER REINHARDT, by his undersigned counsel, WILLIAM MALLORY KENT, and moves this Honorable Court for an order vacating the ten (10) year sentence concurrent imposed on count I, in case number 91-11370 CF, and reimposing the original five (5) year concurrent sentence on that count.

STATEMENT OF FACTS AND COURSE OF PROCEEDINGS

On April 14, 1992 Christopher Reinhardt ("Reinhardt"), then 18 years old, appeared before the Honorable Marvin U. Mounts, Jr. and entered an admission of violation of probation to the probation on burglary of a dwelling, a second degree felony, count I, and grand theft, a third degree felony, in count III, in case number 91-

11370 CF. At the same time and before the same judge Reinhardt pled guilty to a new charge of a third degree felony grand theft in case number 92-1942 CF. [4-14-1992TR3]¹

Reinhardt asked to be released for 72 hours [4-14-1992TR10]. The State, represented by Assistant State Attorney Marc Golden, opposed his release. [4-14-1992TR11] Judge Mounts stated that “I will give him the ten years if he commits another crime or if he doesn’t show up here on Friday at nine o’clock.” [4-14-1992TR12]

Judge Mounts stated:

[THE COURT] Mr. Rivera [Assistant Public Defender] knows that I will give you the full ten years. He is going to fill out a form for you to sign. **I am imposing the five years now or will be in a minute.**

If you commit some other crime, even just a trespass let’s say that can be proved in a non-jury trial in here, you are buying that additional five years.

[4-14-1992TR13]

...

¹ References to the transcripts in this case are in the form of the date of the transcript, followed by the letters TR, followed by the applicable page number in the transcript.

[THE COURT] I haven't imposed the sentence yet, Mr. Rivera, I don't think, is that correct? I don't believe I have.

[MR. RIVERA] No, you haven't, Judge.

[THE COURT] . . . I adjudicate you to be guilty of the underlying probation and I adjudicate you to be guilty of the new substantive grand theft.

I impose sentence on each count, each case with credit, five years in the Department of Corrections. I stay and suspend the execution of the sentence until Thursday morning at 9:00 o'clock in this courtroom. Should you fail to appear then, the sentence will automatically be increased from five years to ten years on the second degree felonies. The five years remains on the third degree felony but I can give him I guess consecutive time. In any event, the sentences are suspended until Thursday at 9:00 o'clock. I really hope you appear here, Mr. Reinhardt.²

[4-14-1992TR15-16]

Judgment was entered in both cases - - 92-1942 CF and 91-11370 CF - - on

² This was only 48 hours, not the 72 hours the defendant agreed to. There was only one second degree felony, not two, and two third degree felonies, not one.

April 14, 1992. Judgment and sentence was rendered on that day by the clerk of the court filing the judgment and sentence in each case. [Appx.]

On April 16, 1992 Reinhardt appeared as required for execution of his sentence, the Honorable Mary E. Lupo presiding. The State was again represented by Assistant State Attorney Golden and the defendant was again represented by Assistant Public Defender Rivera. [4-16-1992TR1-2]

Judge Lupo stated:

[THE COURT] Apparently Judge Mounts allowed you to leave court on April 14th, over the State's objection, with your promise to come today to surrender and go to the Department of Corrections . . . I don't normally do this, so you lawyers can help me. Does Mounts do any formal inquiry?

[ASSISTANT STATE ATTORNEY GOLDEN] No, Judge. He just asks him to surrender at this time and asks the State if he has picked up any charges while he has been on furlough, none that I know of, and then imposes the sentence which he previously stayed.

[THE COURT] Okay, does that sound right to you, Mr. Rivera?

[ASSISTANT PUBLIC DEFENDER RIVERA] Yes, Judge.

[THE COURT] Mr. Reinhardt, are you ready to be surrendered at this

time?

[THE DEFENDANT] Yes, ma'am.

[THE COURT] **Okay, I will lift the stay on the execution of the sentence. I remand you to the custody of the Palm Beach County Sheriff to begin your prison term as ordered by Judge Mounts on April 14th, Okay. Bye-bye.**

(Court was in recess.)

[4-16-1992TR3-4]

Thereafter, on April 22, 1992, eight days after sentence was imposed, and six days after execution of sentence, Assistant State Attorney Golden filed a motion in both case number 91-11370 CF and 92-1942 CF, styled "Motion for Correction of Sentence." [Appx.] That motion alleged that "On April 21, 1992, the State became aware that the defendant had been charged for a crime that had occurred on April 15, 1992 of armed robbery" and requested the Court "vacate the previously imposed sentence of five (5) [years] concurrently. [sic] Additionally, the State requests this Court to impose the guideline departure sentence of 10 years in the Department of Corrections." [Appx.]

A hearing was conducted before Judge Mounts on that motion on April 28, 1992, fourteen days after sentence was imposed, and twelve days after Reinhardt had

been remanded to the custody of the Palm Beach County Sheriff to be committed to the Department of Corrections. The court did not grant the State's motion, but did rule as follows:

It seems to me that the condition of his release concerning the commission of some other crime is contingent on the State proving the commission of some other crime by a preponderance of the evidence.

I think you are entitled to that privilege and that right and I will afford it to you. I instruct the State to obtain at least an hour or two hour period of time in which to present the testimony to establish or not establish the existence of this other crime.

I vacate and set aside the sentence imposed on April 14th of 1992. I remand the client to the custody of the Palm Beach County Sheriff

...

[4-28-1992TR9-10]

Then on June 11, 1992 a hearing was conducted before Judge Mounts at which the State put on evidence to establish probable cause to believe that Reinhardt committed a robbery of a jewelry store on April 15, 1992 and the judge made a finding that Reinhardt had committed a crime while on release. [6-11-1992TR30] Following that finding Judge Mounts imposed sentence of five years on each of the

two third degree felonies, but **increased the sentence from five years to ten years** concurrent on the burglary of a dwelling in case number 91-11370 CF. [6-11-1992TR38]

ISSUE PRESENTED

THE COURT VIOLATED REINHARDT'S CONSTITUTIONAL PROTECTION AGAINST DOUBLE JEOPARDY WHEN IT INCREASED REINHARDT'S SENTENCE IN COUNT ONE OF CASE NUMBER 91-11370 CF (BURGLARY OF A DWELLING) FROM FIVE YEARS TO TEN YEARS AFTER REINHARDT HAD COMMENCED SERVICE OF THAT SENTENCE.

MEMORANDUM OF LAW

Double Jeopardy under the Florida and United States Constitutions³ is implicated in two forms: (1) to be twice *tried* for the same offense, and (2) to be twice *punished* for the same offense. The Court's order vacating the original sentence in this case then imposing a more severe sentence, after sentence had been pronounced, judgment entered, court recessed, the defendant remanded into custody and take from the custody of the court and remanded to the custody of the sheriff for commitment to the Department of Corrections, violated the protection against being twice punished for the same offense.

This issue is cognizable under Rule 3.800. *Hopping v. State*, 708 So.2d 263 (Fla. 1998) ("Hopping argues that because the trial court can determine as a matter of law that his sentence has been unconstitutionally enhanced in violation of the

³ Article I, § 9, Florida Constitution, Fifth Amendment, United States Constitution, applicable to the State of Florida under the Fourteenth Amendment to the United States Constitution.

double jeopardy clause, the matter is cognizable under rule 3.800. We agree.”).⁴

The case is controlled by the recent holding in *Obara v. State*, ___ So.2d ___, 2007 WL 1573936 (Fla. 5th DCA 2007):

We find the instant case to be controlled by the supreme court's holding in *Ashley v. State*, 850 So.2d 1265 (Fla.2003), that once a sentence has been imposed and the person begins to serve the sentence, that sentence may not be increased without running afoul of double jeopardy principles. See also *Shepard v. State*, 940 So.2d 545 (Fla. 5th DCA 2006). The State tried to distinguish *Ashley*, arguing that double jeopardy principles are not implicated because Mr. Obara had not begun to serve his sentence, as he had not yet been transferred from the court's custody. We acknowledge that in *Curtis v. State*, 789 So.2d 394 (Fla. 4th DCA 2001), the fourth district court adopted the State's view.⁵ However, *Curtis* overlooked the supreme court's decision in *Troupe v. Rowe*, 283 So.2d 857 (Fla.1973). In *Troupe*, the trial court accepted the defendant's plea, imposed sentence and concluded the sentencing proceedings. Later that day, the trial court changed its mind, declined to accept the plea and ordered the parties to proceed to trial. The Florida Supreme Court entered an order prohibiting the retrial of the defendant finding that a "final, conclusive judgment and sentence" had been pronounced by the trial judge. *Troupe*, 283 So.2d at 858. Accordingly, the supreme court found that jeopardy had attached, notwithstanding the short time period between the conclusion of the initial sentencing proceeding and the trial court's decision to reject the previously accepted

⁴ For the convenience of the Court and opposing counsel, copies of all cases referred to in this motion are included in the Appendix hereto, in alphabetical order.

⁵ Footnote in original:

See also *Williams v. United States*, 422 F.2d 1318 (5th Cir.1970) (holding that when defendant has not been transferred from court's custody to place of detention at the time his sentences are altered, service of sentences has not officially commenced, and defendant's rights are not impinged by trial court's timely alteration of his sentences).

plea. *Id.* at 860.⁶

But Reinhardt also prevails under *Curtis*. The *Curtis* standard requires only that the defendant no longer be in the custody of the court but have been remanded into custody. That had happened to Reinhardt almost two weeks prior to the Court vacating his original sentence and two months before the Court imposed the more severe sentence.

Curtis v. State, 789 So.2d 394, 395-396 (Fla. 4th DCA 2001), cited with approval the holding of *Rzzo v. State*, 430 So.2d 488, 488-489 (Fla. 1st DCA 1983):

It is well established that once a defendant has begun serving a lawfully-imposed sentence, the defendant may not thereafter be resentenced for an increased term of incarceration. *See e.g., Pooley v. State*, 403 So.2d 593 (Fla. 1st DCA 1981); *Andrews v. State*, 357 So.2d 489 (Fla. 1st

⁶ As the *Obara* court noted, *Curtis* was distinguishable as well because the original sentence in *Curtis* was illegal.

See *Curtis* (calling defendant back to courtroom for resentencing was not error when the trial court mistakenly used the 1995 sentencing guidelines instead of the 1998 sentencing guidelines in the original sentence). Similarly, in *Shepard*, when reversing the trial court's increased sentence, this Court noted that it was significant to our analysis that "the trial judge's originally pronounced sentence was neither ambiguous nor illegal." *Shepard*, 940 So.2d at 547 (citing *Comtois*). In Mr. Obara's case, the originally pronounced sentence was neither illegal nor ambiguous.

Obara v. State, ___ So.2d ___, n 3., 2007 WL 1573936 (Fla. 5th DCA 2007).

Nor was Reinhardt's original sentence illegal.

DCA 1978).

Rizzo v. State, 430 So.2d 488, 488-489 (Fla. 1st DCA 1983).

According to *Curtis*, Double Jeopardy is not implicated until the Defendant has begun serving his sentence and is no longer in court custody:

We hold that the trial court had the authority to increase appellant's sentence and that the increased sentence did not violate double jeopardy, *because appellant had not begun serving his sentence and was still in court custody.*

[emphasis supplied]

Reinhardt had long before been remanded into the custody of the sheriff and commenced and actually served days, weeks, almost two months of his original sentence before the Court imposed the increased sentence. This increased sentence after Reinhardt was no longer in court custody and had begun serving his original sentence violated Reinhardt's Double Jeopardy right and requires the ten year sentence in case number 91-11370 CF on count one (burglary of a dwelling), be vacated and the original concurrent five year sentence be reimposed.

CONCLUSION

WHEREFORE Christopher Reinhardt respectfully requests this honorable Court vacate the ten (10) year concurrent sentence imposed June 11, 1992 on count I in case number 91-11370 CF, and reimpose the original five (5) year concurrent sentence imposed April 14, 1992.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was delivered by U.S. Mail addressed to Office of the State Attorney, 401 North Dixie Highway, West Palm Beach, Florida 33401, this the ____ day of August, 2007.

William Mallory Kent