IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

THIRD DISTRICT

JULY TERM, A.D. 2001

JAMES HUDSON,	**	
Appellant,	**	
vs.	**	CASE NO. 3D99-3007
THE STATE OF FLORIDA,	**	LOWER TRIBUNAL NO. 98-35463
Appellee.	**	

Opinion filed November 21, 2001.

An Appeal from the Circuit Court for Miami-Dade County, Peter Lopez, Judge.

Bennett H. Brummer, Public Defender, and Shaundra L. Kellam, Assistant Public Defender, for appellant.

Robert A. Butterworth, Attorney General, and Darien M. Doe, Assistant Attorney General, for appellee.

Before SCHWARTZ, C.J., and SORONDO, and RAMIREZ, JJ.

ON MOTION FOR REHEARING - GRANTED

PER CURIAM.

The motion for rehearing filed by the appellee, State of

Florida, is granted and the panel opinion dated October 10, 2001, is hereby withdrawn. We adopt the special concurring opinion as the opinion of this court.

SCHWARTZ, C.J. and RAMIREZ, J., concur.

SORONDO, J. (concurring)

In its answer brief and at oral argument, the state forcefully argued that throwing a deadly missile was a qualifying offense as a forcible felony for violent career criminal sentencing. In its motion for rehearing, the state now concedes that it is not and that this case should be reversed on this narrow ground without reaching defendant's Apprendi[1] argument. The Court is urged to adopt Chief Judge Schwartz's concurrence as the majority opinion.

This concession comes as a consequence of the state's concern that this Court's Apprendi analysis could give rise to confusion and "open the flood gates of litigation on this issue."[2] I concede that a misunderstanding of Apprendi has that potential. Accordingly, I join what is now Chief Judge Schwartz's majority opinion.

I cannot help but note that much time and effort could have been saved if the state had simply confessed error in the

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[1] Apprendi v. New Jersey, 530 U.S. 466 (2000).

[2] In Bover v. State, 732 So. 2d 1187 (Fla. 3d DCA 1999), I dissented and said at footnote 11: "It is inconceivable that the amount of post-conviction litigation which presently exists could actually increase." Before the ink on that opinion dried, the Florida Supreme Court decided Heggs v. State, 759 So. 2d 620 (Fla. 2000). Needless to say, I am extremely sensitive to the flood gate argument.

first place.