IN THE FLORIDA SUPREME COURT

FILED
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CLERK, SUPREME COURT
By Deputy Clerk

JEFFREY A. MUEHLEMAN, :

Appellant, :

vs. : Case No. 65,546

STATE OF FLORIDA, :

Appellee. :

APPEAL FROM THE CIRCUIT COURT
IN AND FOR PINELLAS COUNTY
STATE OF FLORIDA

SUPPLEMENTAL BRIEF OF APPELLANT

JAMES MARION MOORMAN
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TENTH JUDICIAL CIRCUIT

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TABLE OF CONTENTS

	PAGE NO.
STATEMENT OF THE CASE AND FACTS	1
SUMMARY OF ARGUMENT	3
ARGUMENT	
JEFF MUEHLEMAN'S DEATH SENTENCE MUST BE VACATED BECAUSE THE RECORD DOES NOT REFLECT THAT THE COURT BELOW MADE THE REQUISITE FINDINGS OF FACT AS TO AGGRAVATING AND MITIGATING CIRCUM-STANCES PRIOR TO ORALLY IMPOSING THE DEATH SENTENCE, AND WRITTEN FINDINGS AS TO AGGRAVATING AND MITIGATING CIR-CUMSTANCES WERE NOT FILED UNTIL AFTER THE COURT LOST JURISDICTION.	4
CONCLUSION	6
CERTIFICATE OF SERVICE	6

TABLE OF CITATIONS

CASES CITED	PAGE NO.
Gonzalez v. State 384 So.2d 57 (Fla.4th DCA 1980)	5
Morgan v. State 415 So.2d 6 (Fla.1982)	5
State ex rel. Faircloth v. District Court of Appeal, Third District 187 So.2d 890 (Fla.1966)	4,5
Van Royal v. State 11 F.L.W. 490 (Fla.Sept. 18, 1986)	4,5
Vaught v. State 410 So.2d 147 (Fla.1982)	5

OTHER AUTHORITIES	
§921.141(3), Fla.Stat.(1985)	5
Fla.R.App.P. 9.600(a)	5

SUPPLEMENTAL BRIEF OF THE APPELLANT

STATEMENT OF THE CASE AND FACTS

Appellant, JEFFREY A. MUEHLEMAN, pleaded guilty to murder in the first degree on May 1, 1984. (R631-642)

A penalty trial was conducted before a jury on May 2-6, 1984. (R643-1239, 2230-2551) On May 6, 1984, the jury recommended by a ten to two vote that Muehleman be sentenced to death. (R304, 1254)

On June 8, 1984, Judge Crockett Farnell orally sentenced Muehleman to death, with these comments: (R1340-1341)

> It will be the judgment of the law and sentence of this Court that Jeffrey A. Muehleman be sentenced to death by the electric chair. I find that this offense, probably the most mitigating factor is that he did, in fact, enter a plea of guilty to murder in the first-degree, to what I consider to be a very brutal murder of an aged and defenseless victim.
>
> I won't reiterate the grisly details. We have already talked on them enough today. But after killing Mr. Baughman, the defendant stole whatever he wished, disposed of the body. After the commission of the offense, the following day he used Mr. Baughman's keepsake silver dollar, a silver dollar which had a date of Mr. Baughman's birth to purchase a pack of cigarettes.
>
> I do not find any remorse in his actions. I find that the aggravating factors in this case far outweigh any mitigation. I understand the statements that Mr. Muehleman has presented to the Court, and I hope that he is in truth, in fact, at peace with himself and satisfied that his hand is, faith is in the hand of Lord, and I ask God to have mercy on his soul.

Jeff Muehleman filed his notice of appeal to this Court on June 26, 1984. (R316)

The court's written "Findings as to Aggravating and Mitigating Circumstances in Support of the Imposition of the Death Penalty" were signed and filed on August 28, 1984. (R309-315)

SUMMARY OF ARGUMENT

The court which sentenced Jeff Muehleman to death failed to make the findings of fact as to aggravating and mitigating circumstances required by Florida's capital sentencing statute before he orally imposed sentence. His written findings in support of the death sentence were only filed after the circuit court was divested of jurisdiction by the filing of Jeff Muehleman's notice of appeal to this court. Van Royal v. State dictates vacation of the sentence of death.

ARGUMENT

JEFF MUEHLEMAN'S DEATH SENTENCE MUST BE VACATED BECAUSE THE RECORD DOES NOT REFLECT THAT THE COURT BELOW MADE THE REQUISITE FINDINGS OF FACT AS TO AGGRAVATING AND MITIGATING CIRCUMSTANCES PRIOR TO ORALLY IMPOSING THE DEATH SENTENCE, AND WRITTEN FINDINGS AS TO AGGRAVATING AND MITIGATING CIRCUMSTANCES WERE NOT FILED UNTIL AFTER THE COURT LOST JURISDICTION.

In the recent case of Van Royal v. State, 11 F.L.W. 490 (Fla. Sept. 18, 1986) this Court vacated the appellant's three death sentences where the lower court had orally pronounced sentence, but had not filed his written findings in support thereof until after the appeal had been initiated and the record on appeal sent to this Court. The instant case is comparable to Van Royal.

In Van Royal the trial court orally sentenced the appellant to death with the comment that he had never seen, or heard of, a more brutal crime. Similarly, in orally sentencing Jeff Muehleman to death, Judge Farnell offered a few brief remarks concerning the facts of the offense, but did not make specific contemporaneous oral or written findings as to which aggravating and mitigating circumstances he found to exist, or how and why the aggravation outweighed the mitigation so that the death penalty was appropriate.

Here, as in Van Royal, by the time the circuit court judge filed his written reasons for imposing a sentence of death, he had lost jurisdiction. Once Muehleman filed his notice of appeal, jurisdiction became vested in this Court. State ex rel.

Faircloth v. District Court of Appeal, Third District, 187 So.2d 890 (Fla.1966); Gonzalez v. State, 384 So.2d 57 (Fla.4th DCA 1980).

Although in Van Royal, unlike here, the record on appeal had already been transmitted to this Court before the trial court filed his written findings in support of the death penalty, this distinction is not significant. Florida Rule of Appellate Procedure 9.600(a) provides for the lower tribunal to have concurrent jurisdiction with the appellate court to render orders on any procedural matter relating to the cause prior to transmission of the record. However, proper imposition of a sentence of death must be deemed a substantive, rather than a procedural, matter. See Morgan v. State, 415 So.2d 6 (Fla.1982) and Vaught v. State, 410 So.2d 147 (Fla.1982).

Nor is the fact that the jury in Van Royal returned a life recommendation while the jury below returned a death recommendation for Jeff Muehleman determinative of this issue. Van Royal did not depend upon the jury's advisory sentence for its holding. Furthermore, regardless of the jury's recommendation, the court is required to weigh the aggravating and mitigating circumstances himself prior to imposing sentence in a capital case. §921.141(3), Fla.Stat.(1985). The record does not reflect that the judge below fulfilled this obligation.

Van Royal and Florida's capital sentencing scheme thus compel the conclusion that Jeff Muehleman's sentence of death must be vacated and this cause remanded for imposition of a life sentence.

CONCLUSION

Appellant, Jeffrey A. Muehleman, prays this Honorable Court to vacate his sentence of death and remand this cause for imposition of a life sentence.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to the Office of the Attorney General, Park Trammell Building, Eighth Floor, 1313 Tampa Street, Tampa, Florida, 33602, this 13th day of October, 1986.

ROBERT F. MOELLER