

65,593

IN THE SUPREME COURT OF FLORIDA

ISAAC WEEMS, :
 :
 Petitioner, :
 :
 vs. :
 :
 STATE OF FLORIDA, :
 :
 Respondent. :
 _____ :

Appeal No. 84-219

FILED

SID J. WHITE

JUL 23 1984

CLERK, SUPREME COURT

By *[Signature]*
Chief Deputy Clerk

PETITIONER'S BRIEF ON JURISDICTION

JERRY HILL
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

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IN THE SUPREME COURT OF FLORIDA

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Petitioner :
vs. : Appeal No. 84-219
STATE OF FLORIDA, :
Respondent :
_____ :

PRELIMINARY STATEMENT

Petitioner, Issac Weems, was the Appellant in the Second District Court of Appeals and the defendant in the trial court. Respondent, the State of Florida, was the Appellee in the Second District Court of Appeals. The appendix to this brief contains a copy of the decision rendered June 22, 1984.

STATEMENT OF THE CASE AND FACTS

On September 31, 1983, the State Attorney for the Sixth Judicial Circuit in and for Pinellas County, Florida, filed an information charging the Appellant, Isaac Weems, with the following: burglary to a structure contrary to Florida Statute 810.02(3), battery on a law enforcement officer contrary to Florida Statute 784.07/784.03, and resisting arrest without violence contrary to Florida Statute 843.02. All of said charges occurred on September 3, 1983. Mr. Weems changed his plea to guilty on all counts and elected to be sentenced under the guidelines. After seeing Mr. Weems' juvenile record, however, the trial court departed from the recommended guideline sentence of non-state prison and imposed two years of imprisonment on each of the charges of burglary and battery on a law enforcement officer and six months of imprisonment on the resisting arrest without violence. Said sentences were to run concurrent with each other, and Mr. Weems was given credit for thirty-five days served.

On appeal Mr. Weems argued that the trial court should not have considered his juvenile offenses, almost all of which were older than three (3) years, in departing from the recommended guideline sentence. Mr. Weems based his argument on Fla.R.Crim.P. 3.701(d)(5)(c). The Second District Court of Appeals, however, held that even though these old juvenile offenses could not be used as prior record points in calculating

the applicable sentencing range, they could be used as a reason for departing from the guidelines.

ARGUMENT

WHETHER THE DECISION IN WEEMS
V. STATE, ___ So.2d ___ (FLA.
2d DCA 1984) (CASE NO. 84-219,
OPINION FILED JUNE 22, 1984),
IS IN CONFLICT WITH THE FOURTH
DISTRICT COURT OF APPEALS?

In Harvey v. State, ___ So.2d ___ (Fla. 4th DCA 1984) (Case No. 83-2344, opinion filed June 13, 1984), 9 F.L.W. 1332, the defendant had a situation almost identical to that in Mr. Weems's case in that the trial court used old juvenile arrests as justification for departing from the guidelines. The Fourth District Court of Appeals vacated the sentence and held "that past criminal conduct which cannot be considered in computing the scoresheet cannot be relied upon as justification for departure from the guidelines." Harvey, id. at 1333.

In Mr. Weems's case it was acknowledged that the old juvenile convictions could not be considered in computing the scoresheet, yet the Second District Court of Appeals specifically held that such convictions could be used as reasons for departing from the guidelines. As a result, Mr. Weems received two (2) years of state prison instead of the recommended non-state prison sanctions. Mr. Weems is entitled to have his sentence vacated and the recommended guideline sentence be instituted.

CONCLUSION

On the basis of the foregoing authorities and arguments, Petitioner has demonstrated that conflict does exist with the instant decision and the Fourth District Court of Appeals so as to invoke the discretionary review of this Court.

Respectfully submitted,


Deborah K. Brueckheimer
Assistant Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to James H. Dysart, Assistant Attorney General, Park Trammell Bldg., 8th Floor, 1313 Tampa Street, Tampa, FL 33602, and to Isaac Weems, No. 043379, PO Box 628, Lake Butler, FL 32054 this 19th day of July, 1984.


Deborah K. Brueckheimer
Assistant Public Defender