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IN THE SUPREME COURT OF FLORIDA

FREDERICK RUSSELL, :

Petitioner, :

vs. : Case No. 66,209

STATE OF FLORIDA, :

Respondent. :

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REPLY BRIEF OF THE PETITIONER

**FILED**  
 SID J. WHITE  
 MAY 23 1985  
 CLERK, SUPREME COURT  
 By [Signature]  
 Chief Deputy Clerk

JAMES MARION MOORMAN  
 PUBLIC DEFENDER  
 TENTH JUDICIAL CIRCUIT

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STATEMENT OF THE CASE AND FACTS

AND SUMMARY OF ARGUMENT

Petitioner will rely on his Statement of the Case and Facts and Summary of the Argument as given in his initial brief.

ISSUE

DID THE TRIAL COURT ERR IN  
DEPARTING FROM THE RECOMMENDED  
GUIDELINE RANGE BY USING APPELLANT'S  
PRIOR RECORD AND ADDITIONAL  
OFFENSES TO JUSTIFY A DEPARTURE?

The Respondent has replied to Mr. Russell's brief by pointing out that another possible reason exists for justifying a departure from the recommended guideline sentence. This other reason pertains to the "variety of crimes charged" (R184). The fact that Mr. Russell had a "variety" of offenses for which he was sentenced on has already been accounted for under the guidelines as indicated by the various degrees that can be scored. In addition, Mr. Russell questions the trial court's statement about "variety of crimes charged" inasmuch as the vast majority of his sentences were for third-degree felonies. Also, eleven out of fifteen of Mr. Russell's additional convictions were for the same offense - uttering forged checks. (R9-12, 21-24, 34-37, 48-51, 62-65, 77-80, 92-95, 107-110, 118-121, 134-139, 151-161, 184-186). Having a "variety of crimes charged," therefore, was not a clear and convincing reason to depart from the guideline sentence in this case.

Petitioner relies on his initial brief for further argument on this issue.


CONCLUSION

In light of the foregoing reasons, arguments and authorities, Appellant respectfully asks this Honorable Court to reverse the judgment and sentence of the lower court.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to William E. Taylor, Assistant Attorney General, Park Trammell Bldg., 8th Floor, 1313 Tampa Street, Tampa, FL 33602, May 21, 1985.

Respectfully submitted,

  
Deborah K. Brueckheimer  
Assistant Public Defender