

**FILED**

SID J. WHITE

FEB 20 1985

CLERK, SUPREME COURT

By \_\_\_\_\_  
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,  
Petitioner,  
v.  
EDWARD LEE WILLIAMS,  
Respondent.

CASE NO. 66,288

PETITIONER'S REPLY BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

Petitioner relies on the preliminary statement contained in its initial brief.

STATEMENT OF THE CASE

Petitioner relies on the statement of the case found in its initial brief.

STATEMENT OF THE FACTS

Petitioner relies on the statement of the facts found in its initial brief.

POINTS INVOLVED ON APPEAL

POINT I

WHETHER PRIOR CONVICTIONS ARE A PROPER BASIS FOR DEPARTING FROM THE SENTENCING GUIDELINES WHEN IT APPEARS THAT A DEFENDANT IS NOT CAPABLE OF BEING REHABILITATED, EVEN THOUGH PRIOR CONVICTIONS ARE FACTORED INTO A SENTENCING GUIDELINE SCORESHEET?

POINT II

WHETHER IF THERE IS ONE CLEAR AND CONVINCING REASON FOR AGGRAVATING A GUIDELINES SENTENCE, THEN ANY OTHER STATED REASON IS MERELY SURPLUSAGE.

ARGUMENT

POINT I

PRIOR CONVICTIONS ARE A PROPER BASIS FOR DEPARTING FROM THE SENTENCING GUIDELINES WHEN IT APPEARS THAT A DEFENDANT IS NOT CAPABLE OF BEING REHABILITATED, EVEN THOUGH PRIOR CONVICTIONS ARE FACTORED INTO A SENTENCING GUIDELINE SCORESHEET.

Petitioner relies on the argument made in its initial brief.

POINT II

IF THERE IS ONE CLEAR AND CONVINCING  
REASON FOR AGGRAVATING A GUIDELINES  
SENTENCE, THEN ANY OTHER STATED REASON  
IS MERELY SURPLUSAGE.

Respondent analogizes the present situation, where one or more reasons for departure from the sentencing guidelines may not be upheld by an appellate court, to capital sentencing where a mitigating factor is present and an aggravating circumstance is reversed. Petitioner asserts that the two situations are not analogous, since mitigating factors are not cited as a basis for departing from the sentencing guidelines and imposing a greater sentence. Nor is the instant situation analogous to a probation violation cause where only technical violations are left standing. In capital cases, this Court has upheld the death penalty when one of several aggravating circumstances has been reversed, but there are no mitigating factors present. See e.g., Troedel v. State, 9 F.L.W. 511 (Fla. December 6, 1984). If this procedure is proper in capital cases, it should certainly be proper for sentencing guidelines departure cases.

Petitioner would also note that the Fourth District Court of Appeal has approved the Fifth District Court of Appeal's opinion in Albritton v. State, 458 So.2d 320 (Fla. 5th DCA 1984). Bloomburg v. State, 10 FLW \_\_\_\_ (Fla. 4th DCA February 13, 1985).




There is no need for a remand for resentencing when one clear and convincing reason for departing from the sentencing guidelines remains intact after appellate review.

CONCLUSION

THEREFORE, based upon the foregoing reasons and authorities cited herein, Petitioner respectfully requests that the Judgment and Sentence of the trial court be AFFIRMED, and the decision of the Fourth District Court of Appeal to remand the case for resentencing be QUASHED.

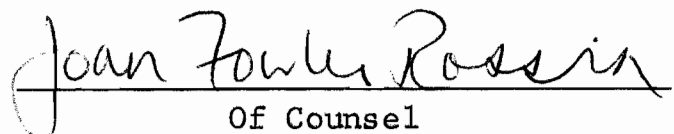
Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Petitioner's Reply Brief on the Merits has been furnished, by courier/mail, to TATJANA OSTAPOFF, ESQUIRE, Assistant Public Defender, 224 Datura Street, 13th Floor, West Palm Beach, Florida 33401, this 15th day of February, 1985.

  
Of Counsel