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IN THE SUPREME COURT OF FLORIDA

JAMES CLARIN GREGORY,)
)
 Petitioner,)
)
 vs.)
)
 STATE OF FLORIDA,)
)
 Respondent.)
 _____)

CASE NO. 66,317

Pet.'s
RESPONDENT'S REPLY BRIEF

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

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TABLE OF CITATIONS

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CASE CITED

Hendrix v. State
(Florida Supreme Court Case No. 65,928)

1

IN THE SUPREME COURT OF FLORIDA

JAMES CLARIN GREGORY,)
)
 Petitioner,)
)
 vs.) CASE NO. 66,317
)
 STATE OF FLORIDA,)
)
 Respondent.)
)

ARGUMENT

IN REPLY TO THE STATE'S CONTENTION
 THAT THE DISTRICT COURT DID NOT ERR
 IN AFFIRMING THE TRIAL COURT'S DECISION
 TO DEPART FROM THE RECOMMENDED GUIDE-
 LINES SENTENCE.

In the answer brief in this cause, Respondent claims that the trial judge's personal views concerning the sentencing guidelines were not his reason for departure from the guidelines. Respondent argues that Petitioner's sentence should be affirmed even if Hendrix v. State, (Fla. S.Ct. Case No. 65,928) is reversed, due to "Petitioner's extensive criminal history and the nature of that record." Respondent supports this argument, stating that, "throughout the sentencing hearing, the state argued the extensive prior criminal record of Petitioner and the extent of similar crimes as a basis for departure." Petitioner has three brief points to make in reply.

First, this case cannot possibly be affirmed if

Hendrix is reversed. Both the number and character of Petitioner's prior convictions were taken into account by the guidelines scoring system. The scoresheet shows 27 points for "Prior record" and 30 points because these prior convictions were all in the "theft, forgery and fraud" category (R46).

Second the trial judge's personal views concerning the guidelines do appear to be the basis for his decision to depart. The judge clearly feels sentences are just not long enough under the guidelines for defendants with prior records. Petitioner is confident this Court will agree with this assessment after reading all of Judge Perry's remarks in context (R103-112).

Finally, Petitioner would point out that the state clearly did not argue "throughout the sentencing hearing" for any particular reasons for departure. In fact, the state's only comment concerning departures during the sentencing hearing was as follows:

THE COURT: Mr. Butler, which is it?
Do you want me to depart from them or
disregard them?

MR. BUTLER: [State Attorney] Depart
from them, Your Honor.

(R97).

If the sentencing guidelines system is to survive and achieve its goal of reducing unwarranted disparity in sentencing, trial judges must either stay within the guideline range or state clear and convincing reasons for departure.

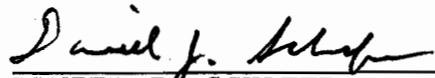
Neither was done in this case, therefore Petitioner's sentence must be reversed.

CONCLUSION

Based on the arguments and authorities cited herein and in the initial brief, Petitioner respectfully requests that this Honorable Court reverse the decision of the Fifth District Court of Appeal in this cause and remand the case for resentencing with appropriate instruction.

Respectfully submitted,

JAMES B. GIBSON
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been mailed to the Honorable Jim Smith, Attorney General at 125 North Ridgewood Avenue, Fourth Floor Daytona Beach, Florida 32014 and to Mr. James Clarin Gregory Inmate No. A030480, 3876 Evans Rd. Box 50, Polk City, Florida 33868 on this 11th day of June 1985.



DANIEL J. SCHAFER
ASSISTANT PUBLIC DEFENDER