

IN THE SUPREME COURT OF FLORIDA

GEORGE W. BURCH,
Petitioner,

v.

CASE NO. 66,493

STATE OF FLORIDA,
Respondent.

FILED
SID J. WHITE
AUG 6 1985

CLERK, SUPREME COURT

PETITIONER'S REPLY BRIEF

By _____
Chief Deputy Clerk

MICHAEL E. ALLEN
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

GLENNA JOYCE REEVES
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TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF CONTENTS	i
I PRELIMINARY STATEMENT	1
II ARGUMENT	2
<u>ISSUE I</u>	
THE TRIAL COURT ERRED IN IMPOSING A SENTENCE IN EXCESS OF THE SENTENCING GUIDELINES SINCE THE ARTICULATED REASONS FOR DEPARTURE WERE NOT CLEAR AND CONVINCING.	2
CERTIFICATE OF SERVICE	3

II ARGUMENT


ISSUE I

THE TRIAL COURT ERRED IN IMPOSING A SENTENCE IN EXCESS OF THE SENTENCING GUIDELINES SINCE THE ARTICULATED REASONS FOR DEPARTURE WERE NOT CLEAR AND CONVINCING.

Respondent seeks to revise the trial court's stated reason for departure to mold it into one which has received appellate imprimatur (RB-4-5). It is, however, the trial court's duty (not an assistant attorney general's) to explicate clear and convincing reasons justifying a sentencing guidelines departure. The only reason articulated by the trial court and approved by the District Court was that petitioner had a "previous revocation of probation." For the reasons discussed initially, petitioner asseverates that this factor did not justify the three cell departure herein. Petitioner requests therefore that his sentence be reversed with directions that a sentence within the guidelines range be imposed.

Respectfully submitted,

MICHAEL E. ALLEN
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT



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Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by hand to Mr. Wallace Allbritton, Assistant Attorney General, The Capitol, Tallahassee, Florida, and a copy has been mailed to petitioner, Mr. George W. Burch, #084025, Post Office Box 340, Sharpes, Florida, 32959, this 14th day of August, 1985.



GLENNA JOYCE REEVES