

IN THE SUPREME COURT OF FLORIDA

FILED

S'D J. WHITE

FEB 25 1985

CLERK, SUPREME COURT

By 
Chief Deputy Clerk

STATE OF FLORIDA,

Petitioner, Cross-Respondent,

v.

CASE NO. 66,551

HERMAN JOHNSON, JR.,

Respondent, Cross-Petitioner.

RESPONDENT'S BRIEF ON JURISDICTION

INITIAL BRIEF OF CROSS-PETITIONER ON JURISDICTION

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STATE OF FLORIDA, :
Petitioner, Cross-Respondent, :
v. : CASE NO. 66,551
HERMAN JOHNSON, JR., :
Respondent, Cross-Petitioner. :
_____ :

RESPONDENT'S BRIEF ON JURISDICTION

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I PRELIMINARY STATEMENT

Respondent, Cross-Petitioner, HERMAN JOHNSON, JR., will refer to the parties in the same manner utilized by petitioner. Reference to the jurisdictional brief of petitioner will be by use of the symbol "PJB" followed by the appropriate page number in parentheses. Reference to petitioner's appendix will be by use of the symbol "PA" followed by the appropriate page number in parentheses. Filed simultaneously with this brief is an appendix containing matters pertinent to this Court's jurisdiction in addition to those contained in petitioner's appendix. Reference to respondent's appendix will be by use of the symbol "RA" followed by the appropriate page number in parentheses.

II STATEMENT OF THE CASE AND FACTS

Respondent, cross-petitioner, accepts the statement of the case and facts set forth by petitioner (PJB-2). In addition respondent, cross-petitioner, points out that the brief he filed before the District Court of Appeal, First District, raised the following issues:

ISSUE I

APPELLANT MUST BE GIVEN AN OPPORTUNITY TO WITHDRAW HIS ELECTION TO BE SENTENCED UNDER THE GUIDELINES IN ORDER TO PRECLUDE A VIOLATION OF THE PROHIBITION AGAINST EX POST FACTO LAWS SECURED BY ARTICLE I, SECTIONS 9 AND 14, UNITED STATES CONSTITUTION, AND ARTICLE I, SECTION 10, FLORIDA CONSTITUTION.

ISSUE II

THE TRIAL COURT ERRED IN DEVIATING FROM THE PRESUMPTIVE SENTENCE SET FORTH IN THE GUIDELINES, SINCE THE REASONS ASSIGNED BY THE TRIAL COURT WERE NOT CLEAR AND CONVINCING OR WERE IMPROPERLY CONSIDERED.

ISSUE III

THE TRIAL COURT ERRED IN FAILING TO REDUCE ITS REASONS FOR DEPARTURE FROM THE SENTENCING GUIDELINES TO WRITING.

After petitioner filed its notice of intent to seek discretionary review (RA-1), respondent, cross-petitioner, filed a cross-notice (RA-2).

III SUMMARY OF ARGUMENT

Since the actual argument falls well within the page limits for a summary of argument, in the interest of avoiding needless duplication the summary of argument will be omitted here.

IV ARGUMENT

ISSUE PRESENTED

THIS COURT HAS JURISDICTION TO RULE
UPON ALL OF THE ISSUES RAISED BEFORE
THE DISTRICT COURT OF APPEAL, FIRST
DISTRICT.

Respondent, cross-petitioner, concedes this Court has conflict jurisdiction on the issue of whether oral, but transcribed, reasons for departure from the sentence called for by the sentencing guidelines are or are not sufficient to satisfy the "writing requirement" of Florida Rule of Criminal Procedure 3.701(d)(11).

Respondent, cross-petitioner, also argues that, because this Court does have jurisdiction, it has jurisdiction to consider all of the issues properly presented to the District Court of Appeal, First District, not only because of this Court's inherent jurisdiction to decide the entire case having accepted jurisdiction on the "writing requirement" issue, but also because Mr. Johnson has filed a timely cross-notice. See generally White Construction Company, Inc. v. Dupont, 455 So.2d 1026 (Fla. 1984); Savoie v. State, 422 So.2d 308 (Fla. 1982); and, Trushin v. State, 425 So.2d 1126 (Fla. 1982).

In exactly the same way a defendant who takes an appeal to a district court does so at the peril of having otherwise non-reviewable rulings favorable to the defendant made at trial being reversed by virtue of a cross appeal by the state, petitioner here, by initiating this proceeding, risks the peril that this Court will upset rulings favorable to the state made by the district court.

V CONCLUSION

Respondent, cross-petitioner, requests this Court to rule it has jurisdiction and to require briefing on the merits of all issues presented to the District Court of Appeal, First District.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by hand to Mr. Thomas H. Bateman, III, Assistant Attorney General, The Capitol, Tallahassee, Florida, and a copy has been mailed to respondent, cross-petitioner, Mr. Herman Johnson, #847194, Post Office Box 221, Raiford, Florida, 32083, this 25 day of February, 1985.



CARL S. MCGINNES