

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,
Petitioner,

vs.

CASE NO. 66,846

DAVID E. HARRIS,
Respondent.

_____ /

FILED

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PETITIONER'S BRIEF ON JURISDICTION

JIM SMITH
ATTORNEY GENERAL

GARY L. PRINTY
ASSISTANT ATTORNEY GENERAL

THE CAPITOL
TALLAHASSEE, FLORIDA 32301
(904) 488-0600

COUNSEL FOR PETITIONER

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PRELIMINARY STATEMENT

David E. Harris, the criminal defendant and appellant in Harris v. State, 10 F.L.W. 580 (Fla. 1st DCA March 7, 1985), will be referred to herein as Respondent. The State of Florida, the prosecution and appellee below, will be referred to herein as Petitioner.

The following symbols will be used in this brief followed by the appropriate page number(s):

"A" -- Appendix (attached)

"R" -- Record on Appeal (attached portions)

STATEMENT OF THE CASE AND FACTS

Respondent was charged by information filed March 31, 1983 in the Circuit Court of the Fourteenth Judicial Circuit, Bay County, Florida, with one count of grand theft. (R 1).

Appellant entered a plea of guilty before Circuit Judge, N. Russell Bower, on April 15, 1983. (R 5). Appellant was placed on probation for a period of one year. (R 5). On February 6, 1984, a hearing was held wherein Respondent's probation was revoked. (R 12). Respondent was found guilty of grand theft and sentenced to five years in state prison. (R 14, 17).

On February 19, 1985, the First District Court of Appeal affirmed the trial court's departure from the guidelines recommended range but vacated and remanded for resentencing because the trial court failed to reduce his reasons for departing into a writing. (A 1-2). On March 7, 1985, the First District Court of Appeal entered an opinion which certified conflict with decisions of the other district courts of appeal, on the issue of the need for written reasons for departing from the sentencing guidelines. (A 3).

Notice to invoke discretionary jurisdiction of the Supreme Court was timely filed on April 8, 1985.

STATEMENT OF JURISDICTION

Petitioner seeks to invoke this Court's discretionary review of the decision below pursuant to Article 5, §3(b)(3) of the Constitution of the State of Florida and Fla.R.App.P. 9.030(a)(2)(A)(iv) on the ground that said decision is in express and direct conflict with a decision of another district court of appeal on the same question of law. The court below held that the trial court had not abused its discretion in departing from the guidelines range where Respondent had violated his probation but vacated and remanded the sentence on the issue of the court's failure to reduce his reasons for departing to a writing.

SUMMARY OF ARGUMENT

The trial court did orally state his reasons for departing at the sentencing hearing to be transcribed by the court reporter for purposes of appellate review. This decision directly conflicts with decisions of the other district courts of appeal which have held that the trial court may orally pronounce his reasons for departure and have them transcribed by the court reporter for purposes of appellate review which is the sole basis for the statutory requirement of written reasons.

ISSUE ON APPEAL

THE DISTRICT COURT'S OPINION IN THE PRESENT CASE EXPRESSLY AND DIRECTLY CONFLICTS WITH BRADY V. STATE, 457 So.2d 544 (Fla. 2d DCA 1984); FLEMING V. STATE, 456 So.2d 1300 (Fla. 2d DCA 1984); BURKE V. STATE, 456 So.2d 1245 (Fla. 5th DCA 1984).

In Jackson v. State, 454 So.2d 691 (Fla. 1st DCA 1984), the court below held that:

We note that Harvey v. State, 457 So.2d 926 (Fla. 4th DCA 1984), holds that so long as the trial court's oral explanation in the record is transcribed for review, a separate written articulation of reasons for departure from the guidelines is not required. We think the rule rather noticeably emphasizes the requirement of a contemporaneous written statement (rather than an oral statement to be transcribed later) to be made at the time of sentence. See Rule 3.701(b)(6)(d)(8)(d)(11) in Committee Note (d)(11), as amended May 8, 1984. We therefore certify conflict under Rule 9.030(a)(2)(A)(IV), Florida Rules of Appellate Procedure.

Id at 692. Subsequent decisions of this Court have followed Jackson, supra. See Oden v. State, 10 F.L.W. 37 (Fla. 1st DCA February 7, 1985). In Burke v. State, 456 So.2d 1245 (Fla. 5th DCA 1984), the court held that:

In the instant case the trial court did not provide a written statement. The court did, however, dictate its reasons for departure into the record. These reasons for transcribed and are part of the record on appeal. Like the Fourth District Court of Appeal, we believe that oral explanation of the records sufficiently provides the opportunity for meaningful appellate review for purposes of Fla.R.Crim.P. 3.701.

Id. at 1246. Likewise in Fleming v. State, 456 So.2d 1300 (Fla. 2d DCA 1984), the court held that:

A trial court need not enter a written order delineating the reasons why it is departing from the guidelines where "the trial court sets forth clear and convincing reasons in the transcript of the sentencing hearing".

Id at 1301. See also Smith v. State, 454 So.2d 90 (Fla. 2d DCA 1984).

This Court should accept jurisdiction and affirm the decisions in Fleming, supra and Burke, supra, and quash the order below which vacated and remanded the sentencing post by the trial court for failure to supply an actual written reason of departure from the guidelines range. In Wainwright v. Witt, ___ U.S. ___, 83 L.Ed.2d 841 (1985), United States Supreme Court stated that:

Anyone familiar with trial court practice knows that the court reporter is relied upon to furnish an accurate account of what is said in the courtroom. The trial judge regularly relies upon this transcript as written indicia of various findings and rulings; it is not uncommon for the trial judge to merely make extemporaneous statements of findings from the bench.

Our conclusion is strengthened by the view of available alternatives. We decline to require a judge to write out in a separate memorandum his specific findings on each juror excused. A trial judge's job is difficult enough without senseless make work. Id at 855-856.

Petitioner urges this Court to reject the court below's elevation of form over substance and requirement of "senseless make work" and allow a trial judge to state his clear and convincing reasons for departure from the guidelines range for

transcription by a court reporter.

CONCLUSION

Petitioner respectfully requests this Honorable Court accept jurisdiction based on the clear conflict between the court below and other district courts of opinion as certified by the court below.

Respectfully submitted:

JIM SMITH
ATTORNEY GENERAL


GARY L. PRINTY
Assistant Attorney General

The Capitol
Tallahassee, Florida 32301
(904) 488-0600

COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been forwarded to Andrew Thomas, Assistant Public Defender, Post Office Box 671, Tallahassee, Florida 32302, this 16th day of April, 1985.


GARY L. PRINTY