

IN THE FLORIDA SUPREME COURT

FILED

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CLERK, SUPREME COURT

By [Signature]
Chief Deputy Clerk

STATE OF FLORIDA,

Petitioner,

v.

RANDALL HERNANDEZ,

Respondent.

CASE NO. 66,875

RESPONDENT'S BRIEF ON THE MERITS

MICHAEL E. ALLEN
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

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RESPONDENT'S BRIEF ON THE MERITS

Respondent accepts petitioner's statement of the case and facts.

II ARGUMENT

ISSUE PRESENTED

IT IS REVERSIBLE ERROR FOR THE TRIAL COURT TO FAIL TO INCLUDE A SEPARATE WRITTEN STATEMENT OF REASONS FOR DEPARTURE FROM THE GUIDELINES WHERE THE TRIAL COURT HAS STATED SUCH REASONS FOR DEPARTURE AT THE TIME OF SENTENCING AND SUCH REASONS ARE TRANSCRIBED AND MADE A PART OF THE RECORD.

The Florida Statutes require that "any sentence imposed outside the range recommended by the guidelines be explained in writing by the trial court judge." §921.001, Fla. Stat. (1983) (emphasis added). The Florida Rules of Criminal Procedure require that "any sentence outside of the guidelines must be accompanied by a written statement delineating the reasons for the departure." Fla.R.Crim.P. §3.701(d)(11) (emphasis added).

The First District Court of Appeal recognized the above language to be mandatory in Jackson v. State, 454 So.2d 691 (Fla. 1st DCA 1984) and Roux v. State, 455 So.2d 495 (Fla. 1st DCA 1984). The state contends "the First District's position to be an overly strict literal interpretation of the words 'written statement'." (See Petitioner's Brief p. 6). This Court has held that words in statutes should be given the meaning accorded them in common usage unless a different connotation is expressed or necessarily implied from the context of the statute in which they appear. Gaulden v. Kirk, 47 So.2d 567 (Fla. 1950). The First District gave the language requiring "a writing by the trial judge" its common meaning in Jackson and Roux.

In a recent en banc hearing, the Fourth District Court of Appeal receded from its holding in Harvey v. State, 450 So.2d

926 (Fla. 4th DCA 1984). See Boynton v. State, 10 FLW 795 (Fla. 4th DCA April 5, 1985). The Fourth District held the writing requirement to be mandatory. In reaching that conclusion, the Fourth District compared decisions in capital cases and juvenile cases where findings in writing are also required. Cave v. State, 445 So.2d 341 (Fla. 1984); R.B.S v. Capri, 384 So.2d 692 (Fla. 3d DCA 1980).

In reversing their holding in Harvey, supra, the court held that "allowing oral pronouncements to satisfy the requirement for a written statement is fraught with disadvantages which, in our judgment, compel the written reasons." Boynton v. State, supra. Problems with oral pronouncements discussed by the Fourth District included the reasons for departure as viewed by the appellate court may differ from those relied upon by the trial judge, the time involved in requiring the appellate courts to delve through sometimes lengthy colloquies in search of the reason for departure, and the development of the law would be better served by requiring precise and considered reasons which would be more likely to occur in a written statement. Id.

The last reason stated above would also facilitate the ongoing research required of the Guidelines Commission by Section 921.001(7), Florida Statutes (1983). The manual prepared by the Sentencing Guidelines Commission says that flexibility is a key element in the concept, including "revisions suggested by changing sentencing patterns of the sentencing judges." These

changes "are . . . subtle and will be brought to the attention of the guidelines commission primarily by means of the reasons articulated by the trial judge for departing from the guidelines." These reasons are to be "documented and analyzed" in order to "determine the need for adjustments in individual offense categories." The Commission concluded, therefore, that it was "important that the sentence imposed and the reasons for departure be accurately recorded." Sentencing Guidelines Manual at p. 7. If the Guidelines Commission were to be required to search Appellate records to determine the reasons for departure, the reporting mechanism would be hampered, if not totally immobilized.

In State v. Williams, 463 So.2d 525 (Fla. 3d DCA 1985), the Third District Court of Appeal added to the confusion when it held that an appeal filed prior to the filing of the reasons for departure were premature. This would require a transcript to be prepared prior to filing a notice of appeal if the transcript is to meet the requirement that reasons for departures be made in writing. This would cause lengthy delays in the appellate process and may greatly increase the costs of an appeal.

In Boynton v. State, supra, the Fourth District outlined three ways in which the trial court could meet the requirement that reasons for departure be in writing. The trial judge could write the reasons on the scoresheet in the area designated "Reasons for Departure." He could dictate a separate order stating the reasons and acknowledge it by his signature. Finally, if he chooses to, he could dictate it to a court reporter "in a clear, concise, and formal manner, and not contain an colloquy

or dialogue." In the event he chooses the final option, the trial judge must review the reasons as transcribed by the court reporter and acknowledge them by his signature. This would also insure the accuracy of the reasons for departure and the accuracy of the scoresheet, a responsibility placed upon the sentencing court. See Committee Note, Fla.R.Crim.P. §3.701(d)(1).

III CONCLUSION

The District Court correctly interpreted Rule 3.701 to require reasons for departure from a recommended guidelines sentence to be written rather than oral.

The decision and opinion of the First District Court should be approved.

Respectfully submitted,

MICHAEL E. ALLEN
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

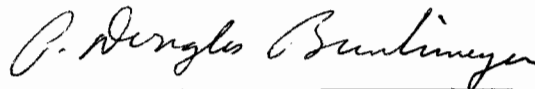


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above Respondent's Brief on the Merits has been furnished by hand delivery to Assistant Attorney General Gary L. Printy, The Capitol, Tallahassee, Florida 32301; and to respondent, Mr. Randall Hernandez, #A-877309, 1199 W. Lantana Road, Lantana, Florida 33462 on this 22 day of May, 1985.



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