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IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,)
)
 Petitioner,)
)
 vs.)
)
 JULIAN TAFT,)
)
 Respondent.)
 _____)

Case No. 4 DCA 84-2394

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CLERK DISTRICT COURT OF APPEAL
FOURTH DISTRICT

PETITIONER'S BRIEF ON JURISDICTION

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PRELIMINARY STATEMENT

The Petitioner was the Appellee in the Fourth District Court of Appeal and the prosecution in the trial Court. The Respondent was the Appellant and the defendant, respectfully, in those lower courts.

In the brief, the parties will be referred to as they appear before this Honorable Court.

The symbol "A" will be used to refer to Petitioner's appendix, which is a conformed copy of the Appellate Court's opinion.

STATEMENT OF THE CASE AND FACTS

On appeal, the Fourth District Court of Appeal vacated Respondent's sentence, and remanded the case for resentencing in accordance with the sentencing guidelines in effect on the date Respondent committed the offense which lead to the sentence at issue.

POINT INVOLVED

POINT I

WHETHER PETITIONER PROPERLY INVOKES THE DISCRETIONARY JURISDICTION OF THIS COURT AS THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL IS IN CONFLICT WITH DECISIONS OF THE FIRST DISTRICT COURT OF APPEAL.

SUMMARY OF THE ARGUMENT

The discretionary jurisdiction of this Honorable Court is properly invoked since the decisions of the First District Court of Appeal are in conflict with a decision of the Fourth District Court of Appeal on the issue of the application of the amended sentencing guidelines to crimes committed prior to, and sentence imposed subsequent to, the effective date of said guidelines.

ARGUMENT

THE PETITIONER SEEKS TO ESTABLISH
THIS COURT'S DISCRETIONARY JURISDICTION
UNDER ARTICLE V, SECTION 3(3) FLA. CONST.
(1983) AND FLA. R. APP. P. 9.030(a)(2)
(A)(iv).

The instant case expressly conflicts with the decisions of the First District Court of Appeal. Respondent in the instant case committed the offense of sexual battery on May 24, 1984. In July of 1984, new guidelines applicable in the sentencing of sexual offenders came into effect. Respondent was sentenced on October 12, 1984. The trial court applied the amended guidelines to Respondent's sentence resulting in a thirty month term of incarceration being imposed. Under the guidelines in effect at the time of Respondent's offense, the trial court would have had the discretion to sentence Respondent to as much as one year of incarceration. The Fourth Dist.

Court of Appeal vacated Respondent's sentence and remanded this case for resentencing pursuant to the guidelines in effect as of the date of the commission of the offense. This was ordered in affirmance of Respondent's assertion that the application of the amended guidelines to his sentence caused the trial court to impose a sentence more onerous than the one he would have received under the guidelines in effect at the time of the commission of his offense. Indeed this Honorable Court in Lee, supra, found such a disparity in sentences to have been prohibited by the ex post fact provision of the Florida Constitution Article X Section 9, Fla. Const.

Petitioner respectfully submits that the trial court may permissibly exceed the guidelines, pursuant to a written reason for departure and thus the imposition of the same thirty month sentence would be within the Court's discretion on remand. See Randolph v. State, 458 So.2d 64 (Fla. 1st DCA 1984). Moreover, the First District Court of Appeal has held that the sentencing guidelines rule in effect at the time of sentencing is the rule that should be applied. See Saunders v. State, 9 F.L.W. 2378 (Fla. 1st DCA Nov. 14, 1984); Randolf, supra, and Jackson v. State, 454 So.2d 691 (Fla. 1st DCA 1984).

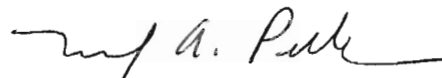
Petitioner submits that this Honorable Court has discretionary jurisdiction, pursuant to the aforementioned authority, to resolve the apparent conflict between the decisions of the First and Fourth District Courts of Appeal.

CONCLUSION

WHEREFORE, based upon the foregoing reasons and authorities cited therein, Petitioner respectfully requests this Honorable Court accept discretionary jurisdiction in the instant case.

Respectfully submitted,

JIM SMITH
Attorney General
Tallahassee, Florida

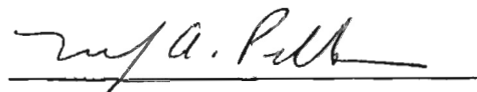


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Brief on Jurisdiction has been furnished by courier, to GARY CALDWELL, ESQ., Assistant Public Defender, 224 Datura Street, West Palm Beach, Florida 33401, this 19th day of June 1985.



Of Counsel