IN THE SUPREME COURT OF FLORIDA

LEROY STEVEN BRADLEY,

Petitioner,

vs. CASE NO. 67,290

STATE OF FLORIDA,

Respondent.

_____/

RESPONDENT'S BRIEF ON THE MERITS

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TABLE OF CITATIONS

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RESPONDENT'S BRIEF ON THE MERITS

PRELIMINARY STATEMENT

Petitioner, Leroy Steven Bradley, was the defendant in the Circuit Court of Duval County, Florida, and the appellant in the District Court of Appeal, First District. Respondent, the State of Florida, was the prosecution and the appellee, respectively. The parties will be referred to as they appear before this Court.

References to the appendix of this brief will be made by use of the symbol "A," followed by the appropriate page number in parentheses.

STATEMENT OF THE CASE AND FACTS

Petitioner's statement of the case and facts is acceptable to Respondent to the extent stated.

SUMMARY OF ARGUMENT

The certified question before the Court was favorably disposed of by this Court in Cochran v. State, 10 F.L.W. 492 (Fla. September 5, 1985), and this case should be disposed of accordingly.

Moreover, Petitioner's assertion that he was misled into believing he was eligible for parole when the trial court retained jurisdiction is illogical due to the fact that retention occurred subsequent to Petitioner's affirmative selection to be sentenced under the sentencing guidelines. Moreover, his assertion is unsupported by the record.

ARGUMENT

ISSUE

> WHEN A DEFENDANT WHO COMMITTED A CRIME BEFORE 1 OCTOBER 1983 AFFIRMATIVELY SELECTS SENTENCING PURSUANT TO THE SENTENCING GUIDELINES, MUST THE RECORD SHOW THE DEFENDANT KNOWINGLY AND INTELLIGENTLY WAIVED THE RIGHT TO PAROLE ELIGIBILITY?

This appeal is before the Court on the above-quoted certified question of great public importance, which question was favorably disposed of by this Court in Cochran v. State, 10 F.L.W. 492 (Fla. September 5, 1985) (A-1). In holding that an election need only be affirmative, this Court stated:

> A defendant sentenced after October 1, 1983 for a crime committed before that date only need choose or "affirmatively select" to be sentenced under the guidelines. Presumably, he knows the consequences thereof and, thus, the record need not affirmatively show a knowing and intelligent waiver of parole eligibility.*
>
> ---
>
> *Such a showing, however, would be beneficial for appeals on post-conviction collateral attacks.

Cochran at 492.

Petitioner now argues that it cannot be presumed he knew the consequences of his election since he was never informed that he was giving up the right to parole consideration and

in fact was misled into believing he was still eligible for parole by the trial court's purported retention of jurisdiction. Petitioner's argument is meritless.

As stated above in Cochran, it is not necessary that the record affirmatively show that the defendant knowingly and intelligently waived the right to parole eligibility. Affirmative selection to be sentenced pursuant to the guidelines is all that is required. Furthermore, to assert that Petitioner was misled into believing he was eligible for parole consideration when the court imposed its sentence retaining jurisdiction is illogical. It would be impossible to be misled into such a belief due to the fact that the court retained jurisdiction subsequent to Petitioner's affirmative selection to be sentenced under the sentencing guidelines. His selection was based on his knowledge that by selecting to be sentenced under the guidelines, he was waiving the right to parole eligibility. The First District Court of Appeal agreed and held that having affirmatively selected guidelines sentencing, Petitioner may not now withdraw that selection on remand (A 3).

The record is devoid of any indication that Petitioner believed he was eligible for parole once the trial court retained jurisdiction. Petitioner requests this Court to allow him to withdraw his affirmative selection of the sentencing guidelines based on pure speculation. It is well established that a court will not reverse a decision predicated on speculation and conjecture. Sullivan v. State, 303 So.2d

632 (Fla. 1974); Singer v. State, 109 So.2d 7 (Fla. 1959).

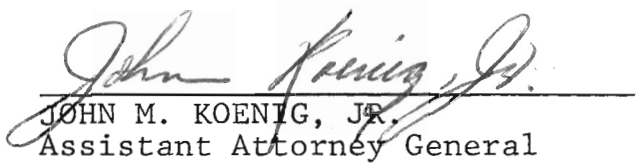
Based on the foregoing, Petitioner's argument should be rejected and the certified question answered in the negative approving the district court's opinion.

CONCLUSION

Based on the facts and foregoing argument, the decision of the First District Court of Appeal should be approved.

Respectfully submitted,

JIM SMITH
ATTORNEY GENERAL



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand to Paula S. Saunders, Assistant Public Defender, Post Office Box 671, Tallahassee, Florida, 32302, on this 30th day of September, 1985.

JOHN M. KOENIG, JR.