8-13

IN THE SUPREME COURT OF FLORIDA

BARRY ALLAN WILLIAMS,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

CASE NO. 67,369
APPEAL NO. 84-2701

FILED
SID J. WHITE
JUL 22 1985
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PETITIONER'S BRIEF ON JURISDICTION

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SUMMARY OF ARGUMENT

This Court has descretionary jurisdiction in this cause pursuant to Rule 9.030(a)(2)(A) (iv) because the decision of the Second District Court of Appeals in this cause conflicts with the decisions of the First District Court of Appeal in Harms v. State 454 So. 2d 689 (Fla. 1st D.C.A. 1984) and Parker v. State 465 So. 2d 1361 (Fla. 1st D.C.A. 1985).

STATEMENT OF THE CASE AND OF THE FACTS

Barry Allen Williams, the Defendant below, shall hereinafter be referred to as "Petitioner". The State of Florida, Plaintiff below, shall be hereinafter be referred as "Respondent". References to the Record on Appeal shall be designated, (R._)

Petitioner was charged in a three count Information with the crimes of Burglary of a Dwelling, Grand Theft and Grand Theft-Auto. (R.3) On April 4, 1984 Petitioner's court appointed counsel entered a written plea of not guilty to the charges. (R.6)

On May 31st Petitioner entered a plea of guilty to the charges after the reduction of the second count to Petit Theft.(R.7) A Bench Warrant was issued for Petitioner on July 24, 1984 and execution of same was returned on October 10, 1984. (R.28) Petitioner was before the court for sentence on November 13, 1984. The court imposed a sentence of fifteen years as to Count One, Sixty Days concurrent as to Count Two and five years concurrent as to Count Three. (R.29-32)

Petitioner's scoresheet was prepared pursuant to Rule 3.701(C) and was a Category Five scoresheet. (R.44) Pursuant to the scoresheet the Petitioner's presumptive sentence should have been "any non-state prison sanction". The reason given by the court for departing from the guideline sentence was,

> "The Defendant was ROR when guilty plea taken and given a sentence date of 20 July 1984 at 2:00 p.m. He did not apear but fled to Texas and was brought back." (R.44)

At the time Petitioner entered his guilty plea it had been with the understanding that he would be sentenced according to the guildelines. (R.10-11) During the course of the plea colloquy the Petitioner was warned by the court that if he failed to appear for sentencing, the court would not be bound by the terms of the plea agreement. (R.20-22) Petitioner failed to

appear for the imposition of sentence. After being apprehended in Texas he was returned to Lee County where he was sentenced on November 13, 1984. Before imposing sentence the court gave the Petitioner the opportunity to explain his failure to appear. Petitioner explained that he had been unable to find employment in Lee County and had gone to Texas to seek employment to support his wife and baby. (R.38)

I.

THE COURT HAS DISCRETIONARY JURISDICTION TO REVIEW THE DECISION OF THE SECOND DISTRICT COURT OF APPEAL RENDERED IN THIS CAUSE.

This Court has the discretionary jurisdiction to review the decision of the Second District Court of Appeal rendered in this cause. The decision of the Second District Court of Appeal affirming the sentence of the Circuit Court of the Twentieth Judicial Circuit was rendered June 19, 1985.

This Court has jurisdiction pursuant to Rule 9.303(a)(AA)(iv) because the decision of the Second District Court of Appeal expressly and directly conflicts with the decisions of the First District Court of Appeal in Harms v. State 454 So. 2d 689 (Fla. 1st D.C.A. 1984) and Parker v. State 465 So. 2d 1361 (Fla. 1st D.C.A. 1985) The First District Court of Appeal cases are directly cited in the opinion of the Second District, which attempts to distinguish the Harms and Parker cases but does not do so.

The Second District's opinion attempts to distinguish Harms and Parker on the grounds that those opinions did not suggest that defendant's failure to appear was willful and intentional or otherwise motivated by a desire to secure the application of Rule 3.701.

In the case at bar Petitioner failed to appear for sentencing because he had left the state to find a job to support his wife and baby.

The trial court in Harms found that Harms's failure to appear was "his own wrongdoing". Yet, the First District used language almost identical to the trial court's in Harms to affirm the excessive sentence for reasons the First District refused to accept. Further, in Harms's, Footnote 4 to the opinion reveals that the reason for failure to appear was that he had committed two armed burglaries, an attempted armed burglary, an attempted murder and possession of a firearm by a convicted felon, an armed crime spree.

Yet while a vicious, violent armed felon is not considered to have willfully failed to appear in the First District,a man who attempts to support his wife and baby by finding a job is found to have acted so wrongfully that a guideline sentence may be exceeded in the Second District.

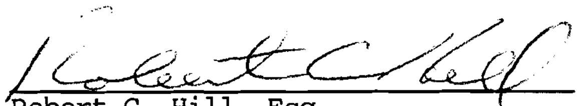
This appalling and inequitable result cries out to this court to take jurisdiction of this cause and make the application of the sentencing guidelines uniform in this state.

CONCLUSION

This Court has discretionary jurisdiction over the decision of the Second District Court of Appeal in this cause.

CERTIFICATE OF SERVICE

I HREBY CERTIFY that a true and correct copy of the foregoing Petitioner's Brief on Jurisdiction has been furnished by regular U.S. Mail to the Attorney General's Office, Dept. of Legal Affiars, Park Trammel Building, 8th Floor, 1313 tampa Street, Tampa, Florida 33602 this 19th day of July, 1985.



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