IN THE FLORIDA SUPREME COURT

SAMUEL T. WILLIAMS,

Petitioner,

v. CASE NO. 67,380

STATE OF FLORIDA,

Respondent.

ON DISCRETIONARY REVIEW FROM THE
FIRST DISTRICT COURT OF APPEAL

BRIEF OF PETITIONER ON THE MERITS

MICHAEL E. ALLEN
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

P. DOUGLAS BRINKMEYER
ASSISTANT PUBLIC DEFENDER
POST OFFICE BOX 671
TALLAHASSEE, FLORIDA 32302
(904) 488-2458

ATTORNEY FOR PETITIONER

TABLE OF CONTENTS

TABLE OF CITATIONS

TABLE OF CITATIONS

(CONT'D)

IN THE FLORIDA SUPREME COURT

SAMUEL T. WILLIAMS,	:	
Petitioner,	:	
v.	:	CASE NO. 67,380
STATE OF FLORIDA,	:	
Respondent.	:	

BRIEF OF PETITIONER ON THE MERITS

I PRELIMINARY STATEMENT

Petitioner was the appellant in the lower tribunal, and the defendant in the trial court. The parties will be referred to as they appear before this Court. A one volume record on appeal, including transcripts, will be referred to as "R" followed by the appropriate page number in parentheses. Attached hereto as an appendix is the opinion of the lower tribunal, dated June 25, 1985.

II STATEMENT OF THE CASE

By information filed November 17, 1983, petitioner was charged with aggravated battery (R 1). The cause proceeded to jury trial on March 6, 1984, and at the conclusion thereof petitioner was found guilty as charged (R 12). On April 12, 1984, petitioner was adjudicated guilty and sentenced to five years in state prison, which was a deviation from the recommended guidelines sentence of 2 1/2 - 3 1/2 years (R 19-25). On April 23, 1984, a timely pro se notice of appeal was filed (R 36). On June 25, 1985, the First District affirmed petitioner's sentence, but certified a question of great public importance (Appendix A). On July 19, 1985, a timely notice of discretionary review was filed.

III STATEMENT OF THE FACTS

Mildred Johnson testified that on November 6, 1983, she went to sleep at 7:30 p.m. or 8:00 p.m. When she woke up at some time before midnight, she had a puncture wound in her chest. Petitioner was on the phone and said he had stabbed someone. She was treated at the scene by paramedics and taken to the hospital, where she stayed for two days. She had been drinking that night. Petitioner was her boyfriend, and they were living together (R 113-22).

Paramedic Charles L. Crampton testified that he and Nancy Baker responded to the victim's house at 11:05 p.m. Petitioner met them at the door and said he had stabbed the victim and had called the police. Crampton observed a small puncture wound in the left chest area, which would be consistent with one made by an icepick. He treated the victim and she was transferred to the hospital (R 123-27). Paramedic Nancy Baker testified that the victim said she had consumed beer that night (R 130-32).

Tallahassee Police Officer Kelly Logan testified that he arrived at the house after the paramedics. He advised petitioner of his constitutional rights, and petitioner said he had stabbed the victim with an icepick, which she kept under pillow. Doctor John K. Hsu, director of the hospital emergency room, was qualified as an expert without objection. He testified that the victim was brought at midnight with a chest wound in the fifth rib area, at the border of the diaphragm. Her blood alcohol was .17. She was admitted into the hospital because of the possibility of bleeding would commence, due to the wound, and because of her high blood pressure (R 141-47). The jury

found petitioner guilty (R 172-73).

A sentencing guidelines scoresheet was prepared, which included 24 points for moderate victim injury, and which called for a sentence of 2 1/2 - 3 1/2 years (R 23). At sentencing on April 12, petitioner's counsel objected to the 24 points for moderate victim injury (R 90). The victim testified that she loved petitioner and did not want to testify against him and did not want him to go to jail (R 91). The court imposed a five year sentence, and as justification for departure from the guidelines, the court orally stated:

> That constitutes a departure from the sentencing guidelines. I do that on the basis that there's no pretense of any moral or legal justification for the commission of this offense, that he had engaged in a violent pattern of conduct which indicates that he's dangerous to society, and particularly that this defendant stabbed this lady while she was asleep and therefore particularly vunerable to any type of attack. Had no opportunity or basis upon which to defend herself at all. (R 94).

Also attached to the judgment and sentence is a cheklist of aggravating factors, of which four were found:

> (9) No pretense of moral or legal justification.
>
> (11) Has engaged in violent pattern of conduct which indicates a serious danger to society.
>
> (32) A lesser sentence is not commensurate with the seriousness of the defendant's crime.
>
> (33) Other reasons, defendant stabed (sic] victim while she was asleep and therefore particularly vunerable (R 25).

On appeal, the First District found that the use of a check-

list of reasons for departure from the guidelines was permissible. The court also sustained three of the four reasons for departure, but certified a question to this Court.

IV SUMMARY OF ARGUMENT

Petitioner will argue in this brief that no version of the harmless error rule can be applied to sentencing guidelines appeals where the sentencing judge has listed several reasons for departure and the appellate court finds one or more of them to be invalid. This cannot be harmless error because the appellate court is in no position to determine whether the sentencing judge would have departed based upon the remaining valid reasons. Nor can the appellate court know whether the sentencing judge would have imposed the same sentence. Petitioner will further argue that the use of a checklist of reasons for departure is not permitted under the guidelines. Petitioner will further argue that the remaining three reasons for departure in the instant case are improper.

V ARGUMENT

ISSUE I

THE APPELLATE COURT MAY NOT APPLY THE HARMLESS ERROR RULE AND AFFIRM THE SENTENCE WHEN THE APPELLATE COURT FINDS THAT A SENTENCING COURT HAS RELIED UPON ONE OR MORE IMPERMISSIBLE REASONS FOR DEPARTING FROM THE GUIDELINES.

The harmless error rule can be applied only if one takes the position that enactment of the sentencing guidelines has, in reality, effecuated no change in the traditionally broad discretion reposed in Florida's trial judges in sentencing matters. From this premise, the argument follows that if one clear and convincing reason for departure exists any other reasons articulated by the trial judge as clear and convincing reasons supporting the departure, even though found by the appellate court to be improper, may be regarded as mere surplusage and the sentence must be affirmed. This reasoning is flawed in at least two respects: first, this philosophy totally guts the guidelines rendering their enactment meaningless and the right to appeal afforded by Section 921.001(5) and 924.06 (1)(e), Florida Statutes totally illusory; second this philsophy ignores that appellate review has always been available when the sentencing has been based upon unreliable or improper factors.

Prior to the enactment of the sentencing guidelines and the resulting appellate review of sentences imposed outside their presumptive range, it was well settled that the imposition of a sentence was within the sole discretion of the trial judge so long as the statutory maximum was not exceeded. See, e.g.,

Brown v. State, 152 Fla. 853, 13 So.2d 458 (1943); Walker v. State, 44 So.2d 814 (Fla. 1950); Infante v. State, 197 So.2d 542 (Fla. 3d DCA 1967). However, even under that system, sentencing decisions were not immuned from appellate scrutiny. Rather, courts of this state did not hesitate to reverse a facially illegal sentence where it was apparent that the trial judge based the sentence wholly or in part on unreliable evidence or factors. See, e.g., Adams v. State, 376 So.2d 47 (Fla. 1st DCA 1979)(defendant's sentence as a habitual offender vacated where trial court relied upon uncorroborated hearsay in determining that extended sentence was necessary for protection of the public); McElven v. State, 440 So.2d 636 (Fla. 1st DCA 1983)(same); Crosby v. State, 429 So.2d 421 (Fla. 1st DCA 1983)(juvenile defendant's sentenced as adult vacated where trial court improperly considered prior arrests not leading to convictions as evidence of guilt); Hector v. State, 370 So.2d 447 (Fla. 1st DCA 1979)(defendant's failure to confess to crime an improper consideration in imposing sentence); Gillman v. State, 373 So.2d 935 (Fla. 2d DCA 1979)(defendant's choice of pleas should not have played any part in the determination of his sentence); Owen v. State, 441 So.2d 1111 (Fla. 3d DCA 1983)(retention of jurisdiction reversed where based upon factors irrelevant and inconsistent with jury's verdict); and Hubler v. State, 458 So.2d 350 (Fla. 1st DCA 1984)(defendant's lack of remorse, his failure to plead guilty, and trial court's belief that defendant encouraged perjury impermissible reasons).

The harmless error standard of appellate review for guidelines departures is clearly much too narrow, and, in fact, ignores that appellate sentencing scrutiny has never been so super-

ficial. In reviewing a guidelines departure, the appellate court cannot merely ascertain if one clear and convincing reason for departure exist. Even assuming arguendo that the enactment of the sentencing guidelines system in no way limits a trial court's sentencing discretion, appellate review of a guidelines departure must at a minimum include a determination whether prohibited reasons, such as those condemned by the foregoing cases, have been utilized to any degree. If the trial court's departure has been based, even in part, upon such a condemned factor, appellate reversal of the sentence is mandated, without regard to the harmless error doctrine. As the foregoing cases demonstrate, a trial judge's reliance upon a prohibited factor in sentencing may not be ignored by the appellate court or regarded as mere surplusage. Rather, resentencing is in order.

However, the enactment of the sentencing guidelines system has curbed judicial discretion in sentencing at least to some extent. By the enactment of the sentencing guidelines system (and the accompanying development of case law relative thereto), certain factors, by legislative or judicial fiat, have been deemed impermissible and prohibited bases for sentencing decisions. Thus, analogously, when a trial judge has relied upon such a prohibited reason in departing from the presumptive guidelines sentence, his improper reliance on such reason taints the entire sentencing process and necessitates an appellate reversal of the sentence without regard to harmless error.

The major impetus for the development for the guidelines was the desire to eliminate or at least minimize unwarranted variations in sentencing. The mechanism for carrying out the objectives and purposes of the sentencing guidelines is a series of nine categories of offenses graduated according to severity. "The penalty imposed should be commensurate with the severity of the convicted offense and the circumstances surrounding the offense". Fla.R.Crim.P. 3.701(b)(3). Each category has five subdivisions, with points assigned to various factors in each subdivision. Among the factors for which points are assigned are the defendant's prior record and his legal status at the of the offense. "The severity of the sanction should increase with the length and nature of the offender's criminal history". Fla.R.Crim.P. 3.701(b)(4). The number of points determines the recommended sentencing range and presumptive sentence. The trial has discretion to impose and need not explain reasons for imposing any sentence within that range. Fla.R.Crim.P. 3.701(d)(8). While the guidelines do not eliminate judicial discretion in sentencing, they do seek to discourage departures from the guidelines. To that end, judges must explain departures in writing and may depart only for reasons that are clear and convincing. Moreover, the guidelines direct that departures "should be avoided unless there are clear and convincing reasons to warrant aggravating or mitigating the sentence". Fla.R.Crim. P. 3.701(d)(11). The guidelines ranges have been constructed on the dual foundations of current sentencing theory and historic sentencing practices in this state.

The harmless error doctrine might be properly applied only

in one situation: that the departure sentence based, in part, upon an improper reason can be affirmed only when the appellate court can unequivocally and unmistakeably know that the impropriety affected neither the decision to depart nor the length of the departure. The only this can occur is if the sentencing judge makes the statement that he would depart and he would impose the same sentence for any or all of the stated reasons for departure. Such did not occur in the instant case.

The harmless error standard of appellate review is clearly ignores the fact that the sentencing body in Florida is the trial judge. It is the trial judge who must decide whether to depart from the presumptive guidelines sentence and he must decide the extent of departure. Under the guidelines, when the trial court has departed from the guidelines based upon reasons which the appellate court determines to be neither clear nor convincing, the trial judge should be given the opportunity to re-evaluate his decision. The appellate courts cannot presume as a matter of law or fact that the improper reasons, specifically articulated by the trial judge as a basis for the sentence, did not contribute to the trial judge's decision to depart on to the extent of his departure. Properly applied, the harmless error doctrine would support affirmance of a harsher sentence, without necessity of a remand, in only a limited number of cases - - only when it is absolutely clear that the erroneous reasons did not contribute in any way to the sentence imposed by the trial judge. Any broader approach would result in appellate sentencing - - the appellate court second guessing the trial judge. The sentence recommended by the guidelines must be considered the presumptively

correct one. When a trial judge has imposed a sentence departing therefrom, that decision has presumably been based upon the reasons he has articulated. When certain of those factors have been deemed inappropriate by the appellate court, it should be exceedingly difficult that the trial judge would have departed, and to the same extent, had he known that many of the factors he found so significant were improper ones. A review of reported cases shows how inconsistently the district courts of appeal have treated cases where some reasons for departure are found to be invalid. The dispositions of these cases are equally haphazard, and seem to depend upon the number of reasons given which survive review. Almost none of the cases are concerned with the length of departure, once invalid reasons are found. In Young v. State, 455 So.2d 551 (Fla. 1st DCA 1984)(question certified), the following occurred: five reasons for departure; four invalid; one valid; recommended sentence - 2 1/2- 3 1/2 years; sentence received - 15 years; result - reversed. The court properly reversed because:

> It is impossible to determine whether the trial judge would have come to the same conclusion on this reason alone.

Id. at 552. Compare Young with Swain v. State, 455 So.2d 533 (Fla. 1st DCA 1984), in which the following occurred: six reasons for departure; five invalid; one valid; recommended sentence - 12-30 months; sentence - 20 years; result - affirmed. Try to explain uniformity in sentencing to Mr. Swain while he is serving 20 years without parole because of one valid reason, whereas Mr. Young receives a new sentencing hearing.

The same court affirmed Brooks v. State, 456 So.2d 1305 (Fla. 1st DCA 1984)(question certified) in which the following

occurred: eight reasons for departure; three invalid; five valid; recommended sentence - 3 1/2 - 4 1/2 years; sentence received - 20 years; result - affirmed. The court looked into its crystal ball and concluded that there was "no uncertainty concerning the trial court's decision to deviate". Id. at 1307. This may be true, but it does not answer the question of whether the same departure rate of five times the recommended sentence would have resulted for only five valid reasons instead of eight.

The trend in the First District seems to be that a sentence will be reversed if the court finds a majority of the reasons for departure to be invalid. For example, in Carney v. State, 458 So.2d 13 (Fla. 1st DCA 1984)(question certified) the following occurred: seven reasons for departure; five invalid; two valid; recommended sentence - 4 1/2 - 5 1/2 years; sentence received - 10 years; result - reversed. See also Burch v. State, 462 So.2d 548 (Fla. 1st DCA 1985)(question certified): four reasons for departure; three invalid; one valid; recommended sentence - 12-30 months; sentence received - 5 years; result - reversed. See also Von Carter v. State, 468 So.2d 278 (Fla. 1st DCA 1985) (question certified): fourteen reasons for departure treated as seven; five invalid; one valid; one partially valid; recommended sentence - 12-30 months; sentence received - 10 years; result - reversed. See also Scott v. State, 469 So.2d 865 (Fla. 1st DCA 1985): eight reasons for departure; five invalid; three valid; recommended sentence - 9-12 years; sentence received - 25 years; result - reversed.

The reverse seems to be true, that a sentence will be affirmed if a majority of the reasons are found to be valid. See, e.g., Hunt v. State, 468 So.2d 1100 (Fla. 1st DCA 1985): five reasons

for departure; two invalid; three valid; recommended sentence - 3 1/2-41/2 years; sentence received - 25 years; result - affirmed. Of course, Swain is an exception to this rule, as is Mitchell v. State, 458 So.2d 10 (Fla. 1st DCA 1984): two reasons for departure; one invalid; one valid; recommended sentence - non-state prison; sentence received - 5 years; result - affirmed. Thus, it is fair to say that the First District will attempt to foresee what the sentencing judge would have done if a majority of the reasons are found to be valid. Petitioner submits that sentencing guidelines departures are no more of a counting process than capital cases. When it affirms, the First District is not subject to the argument that the number of reasons found affects the length of the departure. Such speculation on both counts on the part of the appellate courts leads to meaningless appellate review.

No such speculation exists in the Second District. That court has stated on several occasions that, no matter how many reasons for departure are found by the sentencing judge, if only one survives appellate scrutiny, the sentence will be affirmed without regard to the length of the departure. Webster v. State, 461 So.2d 965 (Fla. 2d DCA 1985); Willard v. State, 462 So.2d 102 (Fla. 2d DCA 1985); and Griffin v. State, 470 So.2d 103 (Fla. 2d DCA 1985)(question certified). The Fifth District expressed the same view in Allbritton v. State, 458 So.2d 320 (Fla. 5th DCA 1984). Even though the results in the Second and Fifth Districts are predictable, such cursory appellate review is even more hollow than that which is exercised by the First District.

Petitioner obviously favors a per se rule of reversal any of the reasons for departure are found to be invalid. The Third and the Fourth Districts seem to share this view. In Davis v.

State, 458 So.2d 42 (Fla. 4th DCA 1984), two reasons for departure out of a total of four were found to be valid. The court nevertheless reversed:

> It appears more equitable to reverse and remand for resentencing . . . simple justice requires that the defendant have his day in court.

Id. at 45. Likewise, in Baker v. State, 466 So.2d 1144 (Fla. 3d DCA 1985)(question certified), the court found only one valid reason out of five. If Baker had been in Lakeland or Daytona Beach his sentence would have been affirmed. But in Miami:

> Because we are uncertain how much weight the trial court placed on the four impermissible reasons, we believe it appropriate to remand the case for resentencing.

Id. at 1146.

Again, the appellate courts of this state are not sentencing bodies. It is impermissible to determine what a sentencing judge would have done when some of his reasons for departure are stricken. The appellate court should not be permitted to engage or require to engage in such speculation. True sentencing uniformity cannot be achieved through such stargazing. The harmless error rule has no place in reviewing sentencing guidelines, and the only remedy is to remand for resentencing.

ISSUE II

THE LOWER COURT ERRED IN SANCTIONING THE USE OF A CHECKLIST FOR REASONS FOR DEPARTURE, AND IN SUSTAINING THREE OF THE REASONS FOR DEPARTURE.

Petitioner will make two arguments in this portion of his brief. First, that the use of a form checklist of reasons for departure is per se invalid; and second, that the three remaining reasons for departure quoted above are not clear and convincing.

The use of a checklist with preordained aggravating and mitigating circumstances was rejected by the sentencing guidelines commission in a comment to the committee note under Fla.R.Crim.P. 3.701(d)(11), where it is stated:

> Recognizing the relative uniqueness of each criminal case, the commission elected not to include a list of factors which may be cited in aggravation or mitigation.

When the commission rejected the use of checklists, it was implicitly admonishing the trial judge not to use them either. It is inconsistent with the guidelines' purpose of ensuring uniformity of sentencing for a trial judge to be able to merely mark on a form and thereby evade the pressure of complying with the guidelines rule. A checklist, moreover, is not adequate to ensure that "the relative uniqueness of each criminal case" will be given proper individualized attention when sentences are aggravated. The Fifth District so found in Higgs v. State, 455 So.2d 451, 454 (Fla. 5th DCA 1984):

> The rules do not articulate an exclusive list of specific reasons to which a court must adhere in order to depart from the recommended guidelines sentence; rather, they require only that in making such departure, a court must give written

> reasons which are "clear and convincing". This omission of a "laundry list" of aggravating or mitigating circumstances appears to be a deliberate decision of the studied commission rather than an oversight.

A mere flick or two or three or four of the pen on the preprinted litany of vague generalities becomes the "clear and convincing reasons" for departure. But the very existence of a list mocks the purpose of the guidelines. Because a checklist is a license to depart at will it should not substitute for the individualized and specific consideration, evidence by a written document, which the drafters of the guidelines envisioned. The unbridled and unreviewable sentencing discretion which the guidelines reported to bury will become resurrected, masquerading as a checklist, if this practice continues. The reasons on the checklist are so cryptic that they arguably might apply in every criminal case. No one can with assurance know the reason or how it fits the facts. This Court should reverse as the First District did in Abbott v. State, 421 So.2d 24 (Fla. 1st DCA 1982), in which it found that an order retaining jurisdiction under Section 947.16(3), Florida Statutes contained legally insufficient reasons. There the court said:

> In stating his grounds for retaining jurisdiction, the trial judge simply referred to the "circumstances surrounding the particular incidents . . . the nature of both offenses . . . the seriousness of the offenses . . . and the gravity of the offenses. . ." without citing any of the facts or circumstances of the crimes. This statement does not satisfy the requirement of [the statute] that justification for retention of jurisdiction be stated with individual particularity. Although the trial judge included in his statement somewhat more specific references to "the conditions under which the vic-

> tim was submitted" and "the loses to the victim", here, again, there was no statement as to what was done to the victim or what his loses were.

The same fatal criticism can be leveled at the checklist in general, and at the three specific reasons selected in this case.

In Alford v. State, 460 So.2d 1000 (Fla. 1st DCA 1984), the First District disapproved Judge Hall's checklist:

> In departing from the recommended range, the court merely checked off four reasons from a laundry list of mitigating and aggravating circumstances. . . . Without our having to excavate from the record facts to serve as elimination, the reasons wholly fail to relate to anything within the context of the case. Such ambiguity is prohibited by Fla.R.Crim.P. 3.701(d)(11), which requires that departures from presumptive sentences be for clear and convincing reasons, and set forth in writing.

Thus, the First District had, by using the terms "shopping list", and "laundry list", indicated its disdain for the use of a checklist of aggravating circumstances. Inexplicably, the Court turned around and sanctioned the use of a checklist in the instant case.

Turning to these specific reasons for departure in the checklist in the instant case, the First District struck the first reason. The second reason on the checklist, i.e., that the defendant "has engaged in violent pattern of conduct which indicate a serious danger to society" suffers from the same criticism voiced by the court in Alford, and Abbott. Where the lower court does not enunciate its findings, it it impossible to "excavate from the record facts to serve as elimination".

The third reason on the checklist is "a lesser sentence is not commensurate with the seriousness of the defendant's crime".

The recommended guidelines sentence of 2 1/2-3 1/2 years serves the goal of punishing the offender. The trial judge's desire to have petitioner incarcerated could have been satisfied by giving a 3 1/2 year term without deviating from the recommended guidelines sentence. The reasons assigned therefore is not clear and convincing because it fails to explain why the length of time permitted by the guidelines for this crime is not sufficient punishment. At sentencing, the trial judge candidly stated that it was his intention to impose a 10 year sentence, but, upon hearing counsel's allocation , decided to impose a 5 year sentence (R 94). The judge's statement is revealing because it shows his fundamental disagreement with the principles of the guidelines, which already take the seriousness of the crime into account through an elaborate system of categories of crimes and scoresheets, including additional points for victim injury. It is as if the court had drafted its own set of guidelines for aggravated battery with a deadly weapon. See the comments of Judge Sharp, dissenting in Hendrix v. State, 455 So.2d 449, 451 (Fla. 5th DCA 1984).

The fourth reason for departure that the victim was asleep is the only finding not embodied in the preprented checklist. It apparently reflects through the trial judge's belief to stab someone who is awake and presumably have some opportunity to defend herself. But if awake andable to defend herself, there might be further bloodshed by both parties. Here, the wound, although potentially serious, did not cause any damage to the vital internal organs or arteries. The victim may have been vunerable, but it is entirely possible that petitioner's quick telephone call to summon aid might have saved her life.

Moreover, it is curious that none of the mitigating factors on the checklist was found by the court, such as number 8 "co-

operation with law enforcement" or number 21 "victim has no objection to sentence" (R 25), where petitioner promptly summoned aid and promptly confessed and where the victim flatly stated at sentencing that she did not wish to see petitioner incarcerated at all.

Thus, petitioner has demonstrated that the use of a checklist or laundry list or shopping list is erroneous because it fails to indivudualize sentencing to fit the offender, and provides no basis for meaningful appellate review of the departure. This Court should declare such a practice to be improper. In the alternative, this Court should find that all of the three remaining reasons for departure fail the "clear and convincing" test and remand for resentencing within the 2 1/2 - 3 1/2 year guidelines range.

VI CONCLUSION

Based upon the foregoing argument, reasoning, and citation of authority, petitioner urges this Court to adopt a rule of law which would prohibit the application of the harmless error rule to guidelines departures, where one or more reasons are found to be invalid by the appellate court. Petitioner also urges this Court to condemn the use of a preprinted checklist of reasons for departure. Finally, petitioner asks this Court to strike the remaining three reasons for departure.

Respectfully submitted,

MICHAEL E. ALLEN
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

P. Douglas Brinkmeyer

P. DOUGLAS BRINKMEYER
Assistant Public Defender
Post Office Box 671
Tallahassee, Florida 32302
(904) 488-2458

ATTORNEY FOR PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by hand delivery to Assistant Attorney General Patricia Conners, The Capitol, Tallahassee, Florida 32301; and by U.S. Mail to petitioner, Samuel T. Williams, #004959, Post Office Box 699, Sneads, Florida 32460 on this 7th day of August, 1985.

P. Douglas Brinkmeyer

P. DOUGLAS BRINKMEYER