

IN THE SUPREME COURT OF FLORIDA

JERRY LEE SLOAN,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

FILED

SID J. WHITE

JUL 26 1985

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

Case No. 67421

DISCRETIONARY REVIEW OF DECISION OF THE DISTRICT
COURT OF APPEAL, SECOND DISTRICT OF FLORIDA

BRIEF OF THE PETITIONER ON JURISDICTION

JAMES MARION MOORMAN
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TENTH JUDICIAL CIRCUIT

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STATEMENT OF THE CASE

A two-count information was filed by the State in Collier County Circuit Court December 22, 1983. Count I charged JERRY LEE SLOAN, Petitioner, with burglary of a structure; Count II charged him with grand theft. (R3)

A jury trial was held July 3, 1984, before the Honorable Charles Carlton, Circuit Judge. The jury returned guilty verdicts as to both counts. (R99-100)

The trial judge adjudicated Appellant guilty and sentenced him to 5 years imprisonment for each count to run concurrently, and allowed credit for time served. (R119-120)

Notice of Appeal was filed August 2, 1984. (R103)

The Public Defender was appointed to represent Petitioner at the district court level August 13, 1984. (R114) An amended Notice of Appeal was filed August 30, 1984.

The Second District Court of Appeal affirmed the trial count in an opinion issued June 7, 1985, Sloan v. State, Case No. 84-1718 (Fla.2d DCA June 7, 1985). A motion for rehearing was denied July 10, 1985. On July 22, 1985, Petitioner filed notice of his intent to seek discretionary review from this Honorable Court. This brief of jurisdiction follows.

STATEMENT OF THE FACTS

Michael Grant testified for the State. He stated he knows Nicky Chandler and Jerry Sloan. (R131) On November 13, 1983, he was at Denise Perry's apartment with Nicky Chandler and Jerry Lee Sloan. (R132) At one point he testified they went to Norman Jewelers. (R133) He said he gave a crowbar to Sloan who used to pry open the door of the jewelry store. (R135) Once inside the store, they took chains and watches. (R136) He testified the chains were hanging in State Exhibit 4. (R137)

When they returned to Denise's, they divided the jewelry among the three of them. (R138) He testified he negotiated a plea with the State and, as a condition, agreed to testify against Appellant. (R139) Objection was made by the defense as to impeaching ones own witness. Grant said he had also testified on May 3, 1984. (R141)

Arthur Norman testified for the State. He is co-owner of Norman Jewelers in Naples, Florida (R81), and was owner on November 13, 1983. (R82) On that date he was notified of a burglary at his store. He went to the store, found things scattered around and some items missing. (R83) Merchandise, which cost him around \$11,000 was missing. (R83)

Mr. Norman identified State's Exhibits 1,2, and 3 as items taken from his jewelry store. (R85) He identified State Exhibit 4. (R85)

Debra Perry testified as a State's witness. Michael Grant used to be her boyfriend. He, along with Sloan, were at her apartment November 13, 1983. (R109) Other people were also

present on that date. Sloan and Grant talked about robbing a store. They departed and when they returned, they had the jewelry with them. (R112)

She also said Michael Grant gave some watches and a necklace to her. (R113) She identified State Exhibits 1,2,and 3 as items given her by Grant. (R114) Later he beat her up and she went to the police. (R114)

Steven Moore testified for the Sate. He is a patrolman for the Naples Police Department. (R124) He received a dispatch to Norman Jewelers November 13, 1983. (R124) He collected some items of evidence, including State's Exhibit 4 and turned them over to Crime Technicial Conley. (R127)

Ronald Mosher, a police officer who came into contact with Appellant on December 3, 1983, testified. (R129) He read Appellant hsi Miranda rights, and Appellant stated he knew Michael Grant by sight and Nicky Chandler by name. (R132) He took Appellant's fingerprints and identified them as Exhibit 11. (R134) They were admitted into evidence without objection. (R135)

Lamar Conley also testified for the State. He was accepted as an expert witness for fingerprint analysis and comparison. (R140) He went to Norman Jewelers on November 13, 1984 (R140), and photographed the scene and lifted some latent fingerprints. He identified State Exhibits 12 - 15. (R141) He developed fingerprints from State Exhibits 4 and 5 (R144), and compared Appellant prints with latent prints froms State Exhibits 16 - 19. (R149) In his opinion those prints were Jerry Lee Sloan's. (R150) Exhibits 11, and 16 - 19 were admitted into evidence without objection. (R151)

Exhibits 1,2,3,4 and 5 were admitted over objection. (R165) A motion for judgment of acquittal was made and denied by the court.

Jerry Lee Sloan testified on his own behalf. (R167) He has been in several jewelry stores in Naples. (R168) He has browsed in jewelry stores in Naples. (R169) He said he did not break into Norman Jewelers.

The sentencing guidelines scoresheet is in the record at R124. Written reasons for exceeding the guidelines were set out by the trial judge at Record 127-128.

ARGUMENT SUMMARY

The Second District Court of Appeal in the instant case ruled that existence of two valid and two invalid reasons to deviate from the sentencing guidelines constituted a basis to affirm Petitioner's sentence. The First and Fourth District Courts of Appeal have ruled differently. (The question has also been certified to the Supreme Court.) ^{1/} It was also ruled by the Second District Court of Appeal that the actions of the State in questioning its own witness did not constitute impeachment and was not error. An alternative decision was rendered as to that point by the Fourth District Court in Ryan v. State, 457 So.2d 1084 (Fla.4th DCA 1984).

^{1/} Young v. State, 455 So.2d 551 (Fla.1st DCA 1984).

ARGUMENT

ISSUE

THE DECISION OF THE SECOND DISTRICT COURT OF APPEAL IN THE INSTANT CASE IS IN DIRECT AND EXPRESS CONFLICT WITH DECISIONS OF THE FIRST AND FOURTH DISTRICT COURTS OF APPEAL THEREBY VESTING THIS HONORABLE COURT WITH DISCRETIONARY JURISDICTION.

The decision of the Second District Court of Appeal in the instant case conflicts with decision in Young v. State, 455 So.2d 551 (Fla.1st DCA 1984); Davis v. State, 458 So.2d 42 (Fla.4th DCA 1984); Ryan v. State, 457 So.2d 1084 (Fla.4th DCA 1984), and Price v. State, Case No. 84-483 (Fla.5th DCA May 23, 1985).

It was Petitioner's position that it was error for the trial judge to have exceeded the presumptive sentence in imposing sentence, that no valid reason to exceed the guidelines existed, and it was error to allow the State to impeach its own witness.

The Second District Court of Appeal ruled that some of the reasons for departure from the presumptive sentence, calculated pursuant to the guidelines, were invalid, some valid. It also ruled that the State's questioning of one of its witnesses was not improper and did not constitute impeachment.

In Young v. State, supra, the First District Court of Appeal found some reasons to exceed the presumptive sentence invalid one valid, and reversed and remanded certifying the question. In Davis v. State, supra, the Fourth District Court of Appeal ruled that when there are both acceptable and unacceptable reasons for departure from the guidelines sentence it is more equitable to reverse and remand for resentencing than to affirm.

In Ryan v. State, supra, the Fourth District Court ruled the State's tactic of asking one of its witnesses about prior inconsistent statements was impeachment and error. In Bell v. State, Case No. 84-1616 (Fla.2d DCA, opinion on rehearing issued July 19, 1985), this issue was certified to be in conflict with Price v. State, supra.


The decision of the Second District Court of Appeal in the instant case is in direct, specific conflict with the decisions of the other districts as referred to above in regard to the sentencing guidelines issue and impeachment issue. This Honorable Court has jurisdiction to review the matter. Art.V, §3(b)(1), Fla. Const.

CONCLUSION

For the foregoing reasons and authorities Petitioner respectfully requests this Honorable Court accept discretionary jurisdiction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to the Office of the Attorney General, Park Trammell Building, Eighth Floor, 1313 Tampa Street, Tampa, FL 33602, by mail on this 24th day of July, 1985.



D. P. CHANCO