

IN THE FLORIDA SUPREME COURT

STATE OF FLORIDA, :  
Petitioner, :  
vs. : Case No. 68,030  
LINDA PETE, a/k/a :  
Linda L. Thomas, :  
Respondent. :  
\_\_\_\_\_ :

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

BRIEF OF RESPONDENT ON JURISDICTION

JAMES MARION MOORMAN  
PUBLIC DEFENDER  
TENTH JUDICIAL CIRCUIT

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STATEMENT OF THE CASE AND FACTS

Respondent accepts the "Statement of the Case and Facts" presented in petitioner's brief with the addition of the following facts:

1. When Respondent entered her pleas of guilty on May 29, 1984, she was not informed that the court could impose a greater punishment under the sentencing guidelines without giving reasons for departure if sentencing was delayed beyond the scheduled sentencing date of June 29, 1984.

2. Respondent was incarcerated in the Hillsborough County Jail on June 29, 1984, the scheduled sentencing date.

SUMMARY OF ARGUMENT

The decision of this Court, State v. Jackson, alleged by petitioner to be in conflict with the decision of the Second District addressed proper scoring of a violation of probation where the guidelines procedure had been changed since the original sentencing. The Jackson decision should not be read as applicable to all defendants regardless of whether they are probation violators; nor should it be read as applicable to all modifications of the sentencing guidelines. Therefore, there is no express and direct conflict between decisions and this Court lacks jurisdiction to review the decision of the Second District.

ARGUMENT

THERE IS NO CONFLICT BETWEEN THE  
OPINION OF THE SECOND DISTRICT  
AND THE DECISION IN STATE v.  
JACKSON, Case No. 65,857 (Fla.  
October 17, 1985)[10 FLW 564].

In State v. Jackson, Case No. 65,857 (Fla. October 17, 1985)[10 FLW 564], one issue considered by this Court was how should a violation of probation be scored under the guidelines when the guidelines had been modified between the date of the original sentencing and the date the appeal was decided. This Court concluded that it was not necessary to resentence the probation violator under previous guidelines procedure when he was resentenced.

In the case at bar, respondent was not a probation violator. She entered pleas with the expectation that she would be sentenced in accordance with the rules then in effect and due to be still in effect on the scheduled sentencing date. That she was not brought before the court on the scheduled sentencing date was in no way attributable to her.

The opinion in Jackson did not say that sentencing errors committed by the trial court cannot be corrected when later changes to the guidelines rules of procedure would cancel the error if resentencing were conducted in accordance with the modified rules. Moreover, the Jackson opinion expressly holds only that a modification affecting the scoring of a probation violation is merely procedural. The Jackson holding does not presume to encompass all categories of defendants and all modifications of the sentencing guidelines.

CONCLUSION

This Court lacks jurisdiction to entertain petitioner's cause because there is no express and direct conflict between opinions within the import of Article V, Section 3(b) (3) of the Florida Constitution. Accordingly, Respondent requests this Court to deny review of the Second District's decision.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to the Attorney General's Office, Park Trammell Building, 1313 Tampa Street, 8th Floor, Tampa, Florida 33602 by mail on this 8th day of January, 1986.

*Douglas S. Connor*  
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