

IN THE FLORIDA SUPREME COURT

FILED

SID E. WHITE

APR 10 1993

CLERK, SUPREME COURT

By M
Chief Deputy Clerk

STATE OF FLORIDA,

Petitioner,

v.

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

PETITIONER BRIEF ON MERIT

JIM SMITH
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COUNSEL FOR PETITIONER

PRELIMINARY STATEMENT

LINDA PETE will be referred to as the Respondent in the brief. The STATE OF FLORIDA will be referred to as the Petitioner. The record on appeal will be referred to by the symbol "R" followed by the appropriate page number.

STATEMENT OF THE CASE AND FACTS

On May 29, 1984, Respondent entered pleas of guilty to the seven drug delivery charges (R-196-199). The State agreed to nolle prosequere the drug possession charges (R-196, 199). The Court ordered a pre-sentence investigation and set sentencing for June 29, 1984 (R-199).

A sentencing hearing was held July 13, 1984 (R-188-192). A guidelines scoresheet was presented which totaled 107 points in Category 7, yielding a recommended sentence of community control or 12-30 months incarceration (R-16-17). The Court sentenced Respondent to 30 months imprisonment on Circuit Court Case No. 84-3197 (R-191-192). On the other six cases, she was adjudicated guilty and sentenced to concurrent fifteen year terms of probation (R-191-192).

Respondent filed timely Notices of Appeal on August 1, 1984 (R-22, 48, 73, 99, 125, 151, 179). The Public Defender for the Tenth and Thirteenth Judicial Circuits were associated and appointed as appellate counsel (R- 27, 53, 78, 104, 130, 156, 184).

On October 11, 1985, The Second District Court of Appeal filed an opinion reversing the sentence of the trial court. A timely motion for rehearing was denied by the Second District on November 20, 1985. The Second District granted petitioner's Motion to Stay Mandate on December 5, 1985. This court accepted jurisdiction on March 25, 1986.

SUMMARY OF ARGUMENT

The trial court correctly applied the guidelines rule in effect at the time of sentencing.

ARGUMENT

ISSUE

THE TRIAL COURT PROPERLY APPLIED
THE RULE IN EFFECT AT SENTENCING

In the instant case, the Second District held that the amendment to Rule 3.701(d)(12), Florida Rules of Criminal Procedure, could not be applied after its effective date of July 1, 1984, to a crime which was committed prior to that effective date of the amendment. This court previously disposed of the exact question of law in State v. Jackson, 478 So.2d 1054 (Fla. 1985). In Jackson this court rejected ex post facto claims to retractive application of sentencing guidelines since such changes were procedural in nature. Whereas the Second District's opinion is in conflict with Jackson, the opinion should be quashed with directions that the trial court's sentenced should be affirm.

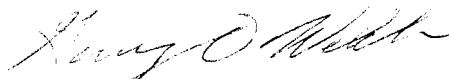
There was no plea agreement that the Respondent be sentenced in accordance with the previous guidelines rules.

CONCLUSION

The decision of the Second District Court of Appeal should be quashed and the sentence of the trial court affirmed.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Douglas S. Connor, Assistant Public Defender, Hall of Justice Building, 455 North Broadway Avenue, P.O. Box 1640, Bartow, Florida, 33830-1640, on this 14th day of April, 1986.



OF COUNSEL FOR PETITIONER