

IN THE SUPREME COURT OF FLORIDA

**FILED**

SID J. WHITE

FEB 9 1987

DILAR S. BOOKER, :  
Petitioner, :  
vs. :  
STATE OF FLORIDA, :  
Respondent. :  
\_\_\_\_\_ :

CLERK, SUPREME COURT

By \_\_\_\_\_  
Deputy Clerk

Case No. 68,400

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

SUPPLEMENTAL REPLY BRIEF OF PETITIONER

JAMES MARION MOORMAN  
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TENTH JUDICIAL CIRCUIT

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PRELIMINARY STATEMENT

This Brief is filed in response to the State's "Supplemental Brief of Respondent's on Jurisdiction," and pursuant to this Court's order of December 3, 1986.

## SUMMARY OF ARGUMENT

Contrary to Respondent's claim, Chapter 86-273, Section 1, Laws of Florida, does not affect the jurisdiction of appellate courts. Petitioner retains a right to appeal because appellate jurisdiction lies anytime a defendant has been sentenced outside the guidelines recommended range. Respondent's authorities are not pertinent because they concern a situation where the legislature acted to cut off a statutory right of appeal to certain parties.

What the legislature has ventured by passage of Chapter 86-273, Section 1, Laws of Florida, is a limitation on the exercise of judicial power. The enactment violates the constitutional separation of powers provision.

Although this Court acquired jurisdiction of the case at bar because the Second District certified a question of great public importance, Petitioner's argument that the trial court gave impermissible reasons for guidelines sentencing departure should also be reviewed. The issue has been appropriately raised throughout the appellate process and is dispositive of the case.

ARGUMENT

ISSUE III

THE ENACTMENT OF CHAPTER 86-273,  
SECTION 1, LAWS OF FLORIDA, DOES NOT  
AFFECT JUDICIAL REVIEW OF PETI-  
TIONER'S SENTENCING.

Respondent's contention that Chapter 86-273, Section 1, Laws of Florida, affects the jurisdiction of this Court (or any appellate court) lacks foundation. This Court acquired jurisdiction over the case at bar by virtue of Article V, Section 3(b)(4) of the Florida Constitution (certified question of great public importance). Petitioner's right to appeal a guidelines departure sentence is conferred by Section 924.06(1)(e), Florida Statutes (1985). The district courts of appeal have jurisdiction to hear appeals that may be taken as a matter of right. Article V, Section 4(b)(1), Florida Constitution. None of these jurisdictional roots is cut by Chapter 86-273, Section 1.

Therefore, Respondent's analogy to cases such as Griffith v. Florida Parole and Probation Commission, 485 So.2d 818 (Fla. 1986) is inapposite. In Griffith, the district court's jurisdiction was based on the constitutional provision of direct review over administrative action, "as provided by general law." 485 So.2d at 820. The legislature passed a general law expressly denying prisoners the right to seek judicial review under the statute which enabled appeals to be taken from adverse administrative action. Accordingly, the appellate courts lost jurisdiction to review administrative action when one of the parties was, like Griffith, a prisoner. Here the legislature cut off Griffith's right to appeal.

By contrast, in the case at bar, Booker's right to appeal his sentence derives from Section 924.06(1)(e), Florida Statutes (1985). Chapter 86-273, Section 1, Laws of Florida, does not affect his right to appeal under this section because appellate jurisdiction continues to extend to all sentences which exceed the guidelines recommended range. In essence, Chapter 86-273, Section 1, is not a limit on jurisdiction as claimed by Respondent, but a construction of the existing law to curtail exercise of the judicial power of review.

Article II, Section 3 of the Florida Constitution provides:

Branches of government.--The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any power appertaining to either of the other branches unless expressly provided herein.

The passage of Chapter 86-273, Section 1, represents an attempt by the legislature to control exercise of the judicial power within the appellate jurisdiction of the courts. This is an impermissible transgression on the separation of powers doctrine. The courts cannot be made subservient to the legislature; consequently there cannot be undue legislative interference with the exercise of judicial power to review a trial court's decision for an abuse of discretion.

Respondent also contends that this Court should not review the reasons given by the trial court for sentencing departure because the basis of this Court's jurisdiction lies in

the certified question. In Savoie v. State, 422 So.2d 308 at 312 (Fla. 1982), this Court wrote:

We have jurisdiction, and once this Court has jurisdiction of a cause, it has jurisdiction to consider all issues appropriately raised in the appellate process, as though the case had originally come to this Court on appeal. This authority to consider issues other than those upon which jurisdiction is based is discretionary with this Court and should be exercised only when these other issues have been properly briefed and argued and are dispositive of the case.

Accordingly, Issue I of Petitioner's Brief on the Merits should also be reviewed because it is dispositive and would dissolve the necessity to reach the constitutional separation of powers question.



CONCLUSION

Petitioner relies upon his requests for relief as presented in his Initial Brief on the Merits and his Supplemental Brief on the Merits.

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 Bldg. 8th Floor, 1313 Tampa Street, Tampa, FL 33602, this *5<sup>th</sup>* day of February, 1987.

  
DOUGLAS S. CONNOR

DSC:ddv