

SUPREME COURT OF FLORIDA

ROBERT PAUL PATTERSON,)
)
 Petitioner,)
)
 v.)
)
 STATE OF FLORIDA,)
)
 Respondent.)
 _____)

CASE NO. 68,608

FILED
S. J. WHITE

AUG 24 1987

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RESPONDENT'S BRIEF ON REMAND
FROM THE UNITED STATES SUPREME COURT

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PRELIMINARY STATEMENT

The Respondent in this Court, the State of Florida, was the prosecution in the trial court, the Appellee in the Fourth District Court of Appeal, and the Respondent in the United States Supreme Court. The Petitioner, Robert Paul Patterson, was the defendant, Appellant, and Petitioner, respectively, in the aforementioned Courts.

In the brief, the parties will be referred to as they appear in the trial court, State and Defendant.

STATEMENT OF THE CASE

Respondent accepts Petitioner's Statement of the Case as found on pages one (1) through seven (7) of Petitioner's Initial Brief on Remand.

POINT ON APPEAL

WHETHER THE DEFENDANT IS ENTITLED
TO BE RESENTENCED UNDER THE GUIDELINES;
AND WHETHER OTHERS SIMILARLY SITUATED
SHOULD APPLY TO THE TRIAL COURTS FOR
RELIEF?

SUMMARY OF ARGUMENT

Respondent agrees that Petitioner should be resentenced pursuant to the United States Supreme Court case of Miller v. Florida, infra.

ARGUMENT

THE DEFENDANT IS ENTITLED TO BE
RESENTENCED UNDER THE GUIDELINES;
OTHERS SIMILARLY SITUATED SHOULD
APPLY TO THE TRIAL COURTS FOR
RELIEF.

This Court has, on remand from the United States Supreme court, directed the parties to file briefs. The instant case involves a Defendant whose split sentence exceeds that which was allowed under the guidelines in effect at the time of the Defendant's offense. This case is controlled by the Supreme Court's decision in Miller v. Florida, 107 S.Ct. 2446 (1987), which proscribes the retrospective application of amendments to the guidelines where it disadvantages a defendant.

Concerning the Defendant, it would appear that this Court's prior decision as well as the Fourth District's prior decision, which both affirmed the sentence imposed by the trial court, must be vacated, and the cause remanded to the trial court for resentencing.

With regard to other persons whose sentences may also be affected by the Miller decision, this Court has already designed a mechanism for obtaining relief. In State v. Whitfield, 487 So.2d 1045 (Fla. 1986), this Court amended Fla.R.Crim.P. 3.800(a) to read as follows:

A Court may at any time correct an illegal sentence imposed by it or an incorrect calculation made by it in a sentencing guidelines sheet.

The amendment was designed to "facilitate correction of such errors at the trial court level." Whitfield at 1047. The State submits relief under Rule 3.800(a) is the appropriate remedy for the present situation. The effect of Miller is that persons who were disadvantaged by being sentenced under guidelines not enacted on the date of their offenses were sentenced using incorrect scoresheets. Rule 3.800(a) is specifically designed to address this problem. State v. Chaplin, 490 So.2d 52 (Fla. 1986).

It is highly probable that many of the defendants who raised this issue on appeal have by now served their sentences so that the issue is moot. Likewise, there may be persons who were sentenced under amended guidelines but were not disadvantaged, e.g., the point totals did not change for their offense category or if they did, that the recommended range remained the same. There may also be persons whose scoresheets were incorrectly calculated but who would prefer not to be resentenced. For example, if a sentence resulted from a plead bargain, the defendant may prefer to let it stand rather than have the plea withdrawn and go to trial, or the plea agreement itself may be a valid reason for a departure. See, Holland v. State, 12 FLW 254 (Fla. May 28, 1987).

Several years ago, this Court was faced with a situation similar to the present one when it held that orders placing person on probation with more than one year's incarceration

as a special condition were illegal. Villery v. Florida Parole and Probation Commission, ³⁹⁶~~363~~ So.2d 1107 (Fla. 1980). In Villery, the court declared that anyone who had such a sentence was entitled, upon application to the trial court, to have it corrected. After Villery was decided, it was recognized that the defendant should have the option of whether to apply for relief in the trial court. Joyce v. State, 404 So.2d 850 (4th DCA Fla. 1981). If such application was made, then the trial court was obligated to have a new sentencing hearing with the defendant present. State v. Scott 439 So.2d 219 (Fla. 1983).

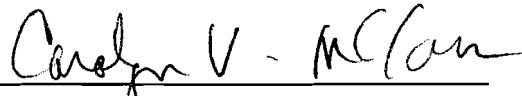
The Villery precedent should guide the effectuation of the law established by the United States Supreme Court in the present Miller decision. A resentencing of this Defendant should be ordered; all others similarly situated who were disadvantaged by being sentenced pursuant to amended guidelines not in effect on the date their offenses were committed should seek relief in the trial court pursuant to Fla.R.Crim.P. 3.800(a).

CONCLUSION

WHEREFORE, based on the foregoing reasons and authorities, the Respondent, the State of Florida, respectfully submits that the appropriate relief for the defendant is to be resentenced. The State further submits that the Court declare all others who wish to pursue an ex post facto claim on this ground apply for relief pursuant to Fla.R. Crim.P. 3.800(a).

Respectfully submitted,

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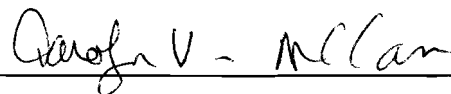


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by mail/courier to CRAIG S. BARNARD, Chief Assistant Public Defender, The Governmental Center/ 9th Floor, 301 North Olive Avenue, West Palm Beach, FL 33401 this 21st day of August, 1987.



Of Counsel