



TABLE OF CONTENTS

	<u>PAGE NO.</u>
TABLE OF CONTENTS	i
TABLE OF CITATIONS	ii
STATEMENT OF THE CASE AND FACTS	1
SUMMARY OF ARGUMENT	2
ARGUMENT	
THE DECISION OF THE DISTRICT COURT MUST BE AFFIRMED ON THE CLEAR PRECEDENT OF <u>WHITEHEAD V. STATE</u> , 11 FLW 553 (Fla., October 30, 1986).	3
CONCLUSION	4
CERTIFICATE OF SERVICE	4

TABLE OF CITATIONS

<u>CASES CITED:</u>	<u>PAGE NO.</u>
<u>State v. Vicknair</u> Case No. 68,536 (Fla., November 26, 1986)	3,4
<u>Vicknair v. State</u> 483 So.2d 896 (Fla. 5th DCA 1986)	4
<u>Whitehead v. State</u> 11 FLW 553 (Fla., October 30, 1986)	3,4

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,                    )  
  )  
                  Petitioner,            )  
  )  
vs.                                        )  
  )  
LARRY TEAGUE,                         )  
  )  
                  Respondent.            )  
\_\_\_\_\_                                  )

CASE NO. 69,034

STATEMENT OF THE CASE AND FACTS

Respondent accepts Petitioner's Statement of the Case  
and Facts.

SUMMARY OF ARGUMENT

The trial court's sole reason for departing from the recommended guidelines sanction was that due to Respondent's prior criminal record he was an habitual offender and an enhanced sentence was necessary for the protection of the public. The District Court of Appeal found this reason was based on Respondent's prior criminal record which was already factored and thus reversed the departure. This Honorable Court has agreed with this conclusion in Whitehead v. State, 11 FLW 553 (Fla., October 30, 1986) and State v. Vicknair, Case No. 68,536 (Fla., November 26, 1986). The same result must be reached in the instant case.

ARGUMENT

THE DECISION OF THE DISTRICT COURT MUST  
BE AFFIRMED ON THE CLEAR PRECEDENT OF  
WHITEHEAD V. STATE, 11 FLW 553 (Fla.,  
October 30, 1986).

The sole written reason given by the trial court for departure was that it "found the defendant to be a habitual offender with enhanced penalty as provided to be necessary for the protection of the public." (R281) The District Court quashed the sentence on the authority of Vicknair v. State, 483 So.2d 896 (Fla. 5th DCA 1986) wherein it held that if the adjudication of the defendant as an habitual offender is based on the defendant's prior criminal record and current conviction which have already been factored into the scoresheet, then the finding cannot support a departure. This Honorable Court has agreed and approved the Fifth District in State v. Vicknair, Case No. 68,536 (Fla., November 26, 1986). Thus the instant case must be likewise approved.

Petitioner's assertion that this Court should affirm the departure is totally unwarranted since the trial court's written reason was solely Respondent's status as an habitual offender. No additional written reasons were given for departure as recognized by the Fifth District. Thus, this Court may not address the assertion of additional reasons made by Petitioner in his brief.

CONCLUSION

Based on the reasons and authority cited herein,  
Respondent respectfully requests this Honorable Court to approve  
the decision of the Fifth District in this cause.

Respectfully submitted,

JAMES B. GIBSON  
PUBLIC DEFENDER  
SEVENTH JUDICIAL CIRCUIT

*Michael A. Becker*

MICHAEL S. BECKER  
ASSISTANT PUBLIC DEFENDER  
112 Orange Avenue, Suite A  
Daytona Beach, Florida 32014  
Phone: 904/252-3367

ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the  
foregoing has been hand delivered to the Honorable Jim Smith,  
Attorney General in his basket at the Fifth District Court of  
Appeal and mailed to Larry Teague, #036180, Seminole County  
Facility, 221 Buch Blvd., Sanford, FL 32771, on this 5th day of  
December, 1986.

*Michael S. Becker*

MICHAEL S. BECKER  
ASSISTANT PUBLIC DEFENDER