

IN THE SUPREME COURT OF FLORIDA

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STATE OF FLORIDA,

PETITIONER,

-VS-

CASE NO. 70,138

CLEDIUS ORLANDO JONES,

RESPONDENT.

PETITIONER'S BRIEF ON THE MERITS

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PETITIONER'S BRIEF ON THE MERITS

PRELIMINARY STATEMENT

Respondent, Cledius Orlando Jones, was the defendant in the Circuit Court of Escambia County, Florida, and the Appellant in the First District Court of Appeal. Petitioner, the State of Florida, was the prosecuting authority and the Appellee, respectively. The parties will be referred to as they appear before this Court.

References to the record on appeal will be designated by the symbol "R", to be followed by the appropriate page number(s) in parentheses.

STATEMENT OF THE CASE AND FACTS

Petitioner relies on the facts as set forth in the First District's opinion filed January 13, 1987, a copy of which is attached hereto as Exhibit A.

On Motion for Rehearing, the First District certified to this Court the following question of great public importance:

IS THE TRIAL COURT'S CONCLUSION THAT
DEFENDANT IS A CONTINUING THREAT TO
THE COMMUNITY DUE TO THE FACT THAT THE
TEMPORAL PROXIMITY OF COMMISSION OF THE
CRIME EVINCES A TOTAL DISREGARD OF THE
PROPERTY RIGHTS OF OTHERS A VALID AND
SUFFICIENT GROUND FOR DEPARTING FROM THE
SENTENCING GUIDELINES?

Jones v. State, 12 F.L.W. 440 (Fla.1st DCA Feb. 4, 1987).

Notice to invoke the discretionary jurisdiction of this Court was timely filed on March 2, 1987. This brief is filed pursuant to the Briefing Schedule issued on March 5, 1987.

SUMMARY OF ARGUMENT

The certified question herein was favorably disposed of by this Court in **Williams v. State**, 12 F.L.W. 132 (Fla., March 19, 1987), and therefore, this cause should be disposed of accordingly.

The record adequately supports the trial court's basis for departure from the sentencing guidelines on the temporal proximity of the commission of offenses.

ARGUMENT

ISSUE

THE FIRST DISTRICT REVERSIBLY ERRED
IN HOLDING THAT THE TEMPORAL PROXIMITY
OF THE COMMISSION OF THE CRIMES IS AN
INVALID REASON FOR DEPARTURE FROM THE
RECOMMENDED GUIDELINE SENTENCE.

On Motion for Rehearing, the First District certified to this Court the following question of great public importance:

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Jones v. State, 12 F.L.W. 440 (Fla.1st DCA Feb. 4, 1987).

The question was favorably disposed of just recently by this Court in **Williams v. State**, 12 F.L.W. 132 (Fla. March 19, 1987), (a copy of which is attached hereto as Exhibit B), where the Court held that "neither the continuing and persistent pattern of criminal activity nor the timing of each offense in relation to prior offenses and release from incarceration or supervision are aspects of a defendant's prior criminal history which are factored in to arrive at a presumptive guidelines sentence. Therefore, there is no prohibition against basing a departure sentence on such factors." 12 F.L.W. at 132.

Turning to the trial court's reason for departure in the instant case (same as certified question), it is unquestionably clear that the court intended to depart due to the temporal proximity of the commission of the crimes, a factor not scored in the presumptive guidelines sentence. Although the First District seemed concerned that the trial court's order made no reference to any particular offenses or the time sequence of their commission, 12 F.L.W. at 440, such information can easily be gleaned from the record¹.

Respondent, as a juvenile was placed under HRS supervision for five counts of automobile breaking and entering dated March 19, 1973, and removed from supervision five months later. On February 28, 1974, he was placed on probation for the offense of truancy and five months later had his probation extended for the offense of petit larceny. He was again placed on probation for trespassing and petit larceny on February 20, 1976, and then committed to youth services on March 2, 1977 for petit larceny. Six months later, as an adult, Respondent pled nolo contendere to burglary and petit theft and was placed on four (4) years probation. While on probation, Respondent

¹ It is entirely appropriate to refer to the record to better ascertain the sufficiency of the reasons given. **Vanover v. State**, 481 So.2d 31 (Fla.2d DCA 1985); **Smith v. State**, 454 So.2d 90 (Fla.2d DCA 1984).

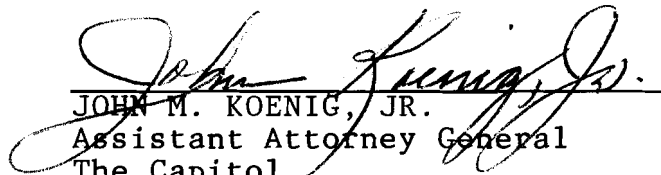
was convicted of burglary and grand theft and sentenced to four years state prison. Ten days later his probation was revoked and he was given a concurrent sentence of four years incarceration (R 36-37). Respondent was paroled on May 4, 1982, and after only approximately one year committed the instant offenses (R 3-4).

Additionally, the First District expressed considerable doubt as to the continuing validity of the temporal pattern of commission of offenses as a reason for departure from the sentencing guidelines, and therefore, such concern obviously played a large part in the court's holding in this case. However, this Court's contrary decision in **Williams, supra**, should put to rest any concern in that respect.

Accordingly, in light of its recent decision in **Williams, supra**, this Court should answer the certified question in the affirmative and reverse the decision of the district court.

Respectfully submitted,

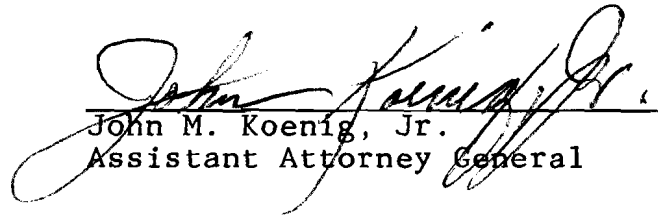
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petitioner's Brief on the Merits has been forwarded to Pamela D. Presnell, Assistant Public Defender, Post Office Box 671, Tallahassee, FL 32302, via U. S. Mail, this 6th day of April 1987.


John M. Koenig, Jr.
Assistant Attorney General