

IN THE SUPREME COURT OF FLORIDA

app reg. adopted
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Deputy Clerk

STATE OF FLORIDA,

Petitioner,

v.

CASE NO. 70,512

VAUGHN R. SIMPSON,

Respondent.

PETITIONER'S BRIEF ON THE MERITS

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S U B E R P I M E

"Trauma" suffered by a victim of robbery or attempted murder is a valid basis for departure from the sentencing "guidelines."

"Trauma" is an effect, though not universal, suffered by some crime victims as a result of being placed in fear or being physically attacked. It is not an element of any offense because it need not be suffered in order for the actual crime to be completed.

Since it is not an element of the crime, it becomes a "circumstance surrounding the crime" and is a recognized basis for departure.

The term "inherent component of the crime" is an undefined term which is not synonymous with the terms "element" or "circumstance surrounding the crime." Its use should be clarified or abandoned.

STATEMENT OF THE CASE AND FACTS

Vaughn Simpson was convicted of armed robbery, attempted first degree murder and using a firearm during the commission of a felony stemming from an incident which took place on June 12, 1985. After being convicted, Simpson pled guilty to armed robbery and aggravated battery regarding a second incident on June 14, 1985.

The sentencing court departed from the guidelines, which only suggested 12-17 years punishment (despite the facts surrounding the crimes) and imposed concurrent sentences totalling 27 years. The reasons for departure are all correctly set forth in the decision rendered by the First District (appendix 1) and for the most part need not be repeated.

The District Court disallowed (as a ground for departure) "emotional and psychological trauma." Although the District Court did not dispute the Circuit Court's finding that Simpson's victims were unarmed, were taunted, terrorized, shot at and shot without provocation the District Court discerned no distinction between this prolonged terror and the "fear" which normally accompanies a robbery. Following denial of rehearing, the District Court certified the following question as being of great public importance:

"WHETHER EMOTIONAL OR PSYCHOLOGICAL
TRAUMA IS AN INHERENT COMPONENT OF
ARMED ROBBERY AND, THUS, NOT A VALID
REASON FOR DEPARTURE FROM THE
SENTENCING GUIDELINES?"

ARGUMENT

IT IS SUGGESTED THAT EMOTIONAL AND
PSYCHOLOGICAL TRAUMA IS A VALID BASIS
FOR DEPARTURE FROM THE SENTENCE
COMPELLED BY THE SO-CALLED SENTENCING
"GUIDELINES."

It is submitted that "psychological trauma" is a valid basis for departure from the so-called sentencing "guidelines" in cases involving robbery and attempted murder just as it is in other violent-crime cases such as sexual battery Lerma v. State, 497 So.2d 736 (Fla. 1986); Casteel v. State, 489 So.2d 1249 (Fla. 1986).

The First District equated the "force, violence or putting in fear" element of robbery with "trauma", thus raising these questions:

- (1) Are "fear" and "trauma" synonymous?
- (2) Does "emotional and psychological trauma" stand as an element of robbery?
- (3) Does an "inherent component of a crime" qualify as an element of an offense or a "circumstance surrounding the offense"?

These issues will be discussed in order.

(A) Trauma vs. Fear

"Fear" is defined by Black's Law Dictionary, Fifth Ed. (1979) as:

"Apprehension of harm; dread; consciousness of approaching danger. Mental response to threat. Profound reverence and awe."

"Trauma" (same source) is defined as:

"A physical injury caused by a blow or fall, or a psychologically damaging emotional experience. An injury, wound, shock or the resulting injury or neurosis, Orthkiese v. Claison & Ewell Engineering, Fla. 126 So.2d 556, 551."

In the case of Lyng v. Roa, 72 So.2d 53, 56 (Fla. 1954) this Court noted the difference between "trauma" and the condition creating it as follows:

"Trauma is defined by Black's Law Dictionary (4th ed. 1951) as "In medical jurisprudence. A wound; any injury to the body caused by external violence." In Webster's Collegiate Dictionary, (5th ed. 1943) the word is defined as "An injury, wound, shock or the resulting condition or neurosis."

As Lyng recognizes, the difference between emotional or psychological trauma and some causative act (such as firing a gun, striking a blow, torture, torment or "putting in fear"), is one of cause and effect. Thus, applying this to our case, we can see that "trauma" is the result of the victims being shot, tormented and placed in fear. Since "cause" is never synonymous with "effect", the decision of the First District is clearly erroneous,

(B) Element of Robbery And Attempted Murder

Given the above discussion, it is quite obvious that

"trauma" is not an "element" of any crime for which Simpson has been convicted.

A robbery can obviously be completed without actually shooting the victim. It can also be accomplished without extending the "fear" element into the kind of sadistic entertainment enjoyed by Mr. Simpson. Equally obvious is the fact that an attempted murder does not require victim injury. The crime of attempted murder is complete upon the firing of the gun, whether the bullet hits the victim or not.

The First District's error in this regard is an unfortunately common one. Instead of analyzing the statutory elements of the crimes, the Court became enmeshed in the "allegata", the details of this particular offense. This Honorable Court, in a host of Blockberger analysis cases, has repeatedly cautioned the District Courts not to fall into this trap. Unfortunately, the warning was not heeded sub judice.

Where trauma is not an element of the crime charged, it is a valid basis for departure. Sias v. State, 487 So.2d 1181 (Fla. 3rd DCA 1986); Casteel v. State, supra; Lerma v. State, supra.

This brings us to the final question:

(C) "Inherent Component of The Offense"

The term "inherent component" first appeared in State v.

Mischler, 488 So.2d 523 (Fla. 1986) without benefit of a precise definition. As a result, the District Courts as well as this Honorable Court have been besieged with appeals. The resulting ~~ad hoc~~ patchwork of decisional law has done little or nothing to remedy the situation.

The so-called "guidelines" (Fla.R.Crim.P. 3.701) specifically provide for departure on the basis of "clear and convincing reasons" (§§ (d) (11)). Subsection (b) (3) states that the penalty for a crime "should be commensurate with the severity of the convicted offense and the circumstances surrounding the offense."

It is ludicrous to state, as some have, that the "severity of the offense" can serve as a basis for departure—but in assessing severity we cannot look at the injury to the victim. To some, all victims are alike, so we should toss a few points into the scoresheet and forget them.

Similarly, we are told in Mischler that something called an "inherent component of the offense" cannot be considered. What is an "inherent component?" Is it a "circumstance surrounding the offense" (like trauma) or is it an element of the offense?

Obviously, an "element" cannot serve as the basis for departure, but does Mischler address an "element"? No, unfortunately, it does not. Thus, either Mischler is in error or

the guidelines do not mean what they say. Rather than uniformity in sentencing, therefore, Mischler and this "inherent component" standard have created the very undefined, ~~ad hoc~~ system which we were told the guidelines would prevent.


If a facet of the sentencing evidence does not relate to an element, it is a "circumstance surrounding the offense" and can justify departure. "Trauma", which is not an element of either robbery or attempted murder, is a "circumstance", and justifies departure.

CONCLUSION

The certified question posed by the District Court, if even answerable due to its use of the undefined term "inherent component", should be answered in the negative.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Petitioner's Brief on the Merits has been forwarded by U.S. Mail to Mr. Carl S. McGinnes, Esquire, Assistant Public Defender, Post Office Box 671, Tallahassee, Florida and Mr. Vaughn R. Simpson, Post Office Box 1500, Cross City, Florida 32628, this 17 day of June, 1987.



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