

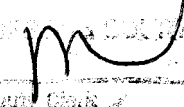
IN THE SUPREME COURT OF FLORIDA

VAUGHN R. SIMPSON,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

JUN 25 1987

CLERK, SUPREME COURT
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CASE NO. 70,561

RESPONDENT'S BRIEF ON THE MERITS

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STATEMENT OF THE CASE AND FACTS

The Petitioner's statement is accepted.

SUMMARY OF ARGUMENT

The "frequency" with which past offenses were committed, as opposed to the "existence" of prior offenses, is not a factor scored into the sentencing guidelines and therefore is a valid basis for departure.

ARGUMENT

THE REGULARITY AND FREQUENCY
I.E., THE TEMPORAL PROXIMITY OF
OFFENSES SCORED ON THE SENTENCING
GUIDELINES IS A VALID BASIS FOR
DEPARTURE FROM THE SENTENCING
GUIDELINES

The certified question presented by the First District seems necessary now, more than ever, due to the inexplicable opinion rendered in State v. Rousseau, 12 F.L.W. 291 (Fla. June 11, 1987) which is in express and direct conflict with this Court's decision in Williams v. State, 504 So.2d 392 (Fla. 1987).

In Rousseau, this Court said:

"The district court evidently viewed the "temporal circumstances" of these crimes to justify departure. We disagree with this conclusion. Each of these three burglaries was scored as a primary offense in determining Rousseau's guidelines sentence. The record reveals no additional facts concerning the timing of these offenses which were not already factored into the guidelines scoresheet. Therefore, this reason cannot justify departure".

Id.

In Williams, this Court said:

"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".

Id.

Williams was in March, Rousseau was decided in June. No one rewrote the guidelines in that period. What, then, explains the rendition of diametrically opposed decisions in two months time? Where is the continuity and predictability we were promised when sold the so-called sentencing "guidelines"?¹

It is respectfully suggested that Rousseau overlooks Williams and is flatly wrong. While prior offenses are "scored", the timing of those prior offenses is not. That is why Williams, rather than Rousseau, correctly states the law and should be followed.

¹Given the recent decision in Miller v. Florida, 1 F.L.W. Fed. S781 (1987), the "guidelines" may in fact be actual "sentences", repealing Ch. 775, Fla.Stat. If so, constitutional problems exist.

CONCLUSION

The "timing" of scored prior offenses may justify departure from the sentence compelled by the so-called sentencing "guidelines".

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand delivery to Mr. Carl S. McGinnes, Assistant Public Defender, Counsel for Petitioner, this 25th day of June, 1987.



MARK C. MENSER
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OF COUNSEL