

IN THE SUPREME COURT OF FLORIDA

FILED
SID J. WHITE

CHARLES LEE ANTHONY, JR.,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

AUG 18 1987

CLERK, SUPREME COURT

By _____

Deputy Clerk
CASE NO. 70,864

RESPONDENT'S BRIEF ON JURISDICTION

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ISSUE

THE DECISION OF THE FIRST DISTRICT
COURT OF APPEAL HEREIN DOES NOT STAND
IN EXPRESS AND DIRECT CONFLICT WITH
THIS COURT'S DECISION IN GRIFFIS V.
STATE, 12 F.L.W. 424 (FLA. JULY 16
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PRELIMINARY STATEMENT

Charles Lee Anthony, Jr., the criminal defendant and appellant below, will be referred to herein as Petitioner. The State of Florida, the prosecution and appellee below, will be referred to herein as Respondent.

The decision of the lower court is currently reported as Anthony v. State, 12 F.L.W. 1329 (Fla. 1st DCA May 27, 1987), and a copy thereof and other pertinent documents bearing upon the propriety of this Court's exercise of its discretionary jurisdiction over this cause have been attached hereto as an appendix. Citations to the appendix will be indicated

parenthetically as "A" with the appropriate page number(s).
Citations to Petitioner's jurisdictional brief will be indicated
parenthetically as "PB" with the appropriate page number(s).

STATEMENT OF THE CASE AND FACTS

For the purpose of resolving the jurisdictional question raised herein Respondent accepts as accurate, though incomplete, Petitioner's Statement of the Case and Facts (PB 2) and therefore submits the following additional information:

While the trial judge, in his sentencing order did utilize the "boiler plate" language complained of (A 6), he also set forth, in commentary form, a statement (set forth fully in the argument portion hereof at p. 7) which further explained the basis for the trial judge's departure decision (A 6).

JURISDICTIONAL STATEMENT

Petitioner evidently seeks to invoke this Court's discretionary review of this cause pursuant to Article V, Section 3(b)(3) of the Florida Constitution and Fla.R.App.P. 9.030(a)(2)(A)(iv), on the ground that the decision of the lower tribunal herein is in express and direct conflict with a decision of this Court on the same question of law.

SUMMARY OF ARGUMENT

Petitioner contends that the lower court's decision herein, as it disposes of the Albritton issue, is in express and direct conflict with this Court's decision in Griffis v. State, infra. Respondent argues that the trial judge's "boiler plate" language, when viewed in conjunction with the valid reason for departure and the trial judge's comments in his sentencing order demonstrates that the lower court correctly resolved the Albritton issue notwithstanding the lower court's citation to its decision in Griffis v. State, infra.

ARGUMENT

ISSUE

THE DECISION OF THE FIRST DISTRICT COURT OF APPEAL HEREIN DOES NOT STAND IN EXPRESS AND DIRECT CONFLICT WITH THIS COURT'S DECISION IN GRIFFIS V. STATE, 12 F.L.W. 424 (FLA. JULY 16, 1987). [Restated by Respondent].

Petitioner seeks to invoke this Court's discretionary review of this cause on the basis of a perceived conflict with this Court's decision in Griffis v. State, 12 F.L.W. 424 (Fla. July 16, 1987). The point of contention arises from this Court's negative response to the following certified question in Griffis:

DOES A TRIAL COURT'S STATEMENT, MADE AT THE TIME OF DEPARTURE FROM THE SENTENCING GUIDELINES, THAT IT WOULD DEPART FOR ANY ONE OF THE REASONS GIVEN, REGARDLESS OF WHETHER BOTH VALID AND INVALID REASONS ARE FOUND ON REVIEW, SATISFY THE STANDARD SET FORTH IN ALBRITTON V. STATE?

Id. at 12 F.L.W. 424. Specifically, this Court held:

We reiterate the principle of Albritton. Such a sentence can be affirmed only where the appellate court is satisfied by the entire record that the state has met its burden of proving beyond a reasonable doubt that the sentence would have been the same without the impermissible reasons. A statement by the trial court that it

would depart for any of the reasons given, standing alone, is not enough to satisfy that burden. [Emphasis added].

Id.

Sub judice, the record before the lower tribunal indicated that in addition to the "boiler plate" language complained of (See sentencing order at A 6), the trial judge also made the following comment a part of his sentencing order:

The conduct of this defendant, Charles Lee Anthony, Jr., in firing a handgun at an automobile occupied by two women, one of whom was his wife, and two small children, now ages 2 and 4, in the proximity and vicinity of a public elementary school at a time when said school was in session, is the act of a depraved, vicious and savage human being.

To sentence this defendant to not more than twelve (12) months in the Duval County Jail would be an unacceptable and inappropriate disposition in this case.

(A 6).

While the lower court did not indicate which of the trial judge's two reasons it found invalid, Respondent assumes that reason A (A 5) being based largely on speculation, was the offending reason. This being the case Respondent contends that the trial judge's comment, which is little more than a stronger restatement of reason B (A 6), demonstrates exactly what his

concerns were in imposing the departure sentence. Accordingly, Respondent submits that the "boiler plate" statement, not standing alone, but viewed in conjunction with the trial judge's comments and the presumably valid reason for departure, unquestionably demonstrates that the lower tribunal disposed of the Albritton issue in conformity rather than in conflict with this Court's decision in Griffis v. State, supra, notwithstanding the court's citation to Griffis v. State, 497 So.2d 296 (Fla. 1st DCA 1986).


CONCLUSION

Based upon the foregoing argument and the authority cited herein Respondent submits that Petitioner has failed to demonstrate the conflict necessary to operate as a predicate for this Court's exercise of its discretionary jurisdiction over this cause.

WHEREFORE, Respondent, the State of Florida, respectfully requests this Honorable Court decline to exercise its discretionary review of this cause.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

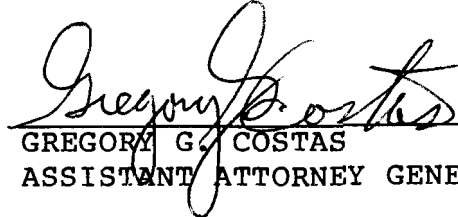

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been forwarded by hand delivery to Ann Cocheau, Assistant Public Defender, Post Office Box 671, Tallahassee, Florida 32302 on this 18th day of August, 1987.


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