

IN THE SUPREME COURT OF FLORIDA

FILED

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CLERK, SUPREME COURT

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STATE OF FLORIDA,

Petitioner,

vs.

CASE NO. 70,918

DANIEL F. JAGGERS,

Respondent.

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ON DISCRETIONARY REVIEW FROM THE  
DISTRICT COURT OF APPEAL, FIRST DISTRICT

PETITIONER'S REPLY BRIEF ON THE MERITS

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TABLE OF CONTENTS

	<u>PAGES</u>
TABLE OF CITATIONS	ii
PRELIMINARY STATEMENT	1
STATEMENT OF THE CASE AND FACTS	2
ARGUMENT	
<u>ISSUE</u>	
WHETHER, PURSUANT TO ITS RECENT RULING IN <u>WILLIAMS III V. STATE</u> , 504 SO.2D 392 (FLA. 1987), A COMMITMENT TO A MENTAL INSTITUTION FOR OTHER THAN A CRIMINAL CONVICTION AND THE SUBSEQUENT CONDI- TIONAL RELEASE OR SUPERVISION STATUS THAT EXISTED AT THE TIME OF THE CRIME, ARE VALID REASONS FOR DEPARTURE FROM THE GUIDELINES? [Certified Question].	3
CONCLUSION	5
CERTIFICATE OF SERVICE	5

TABLE OF CITATIONS

CASES

PAGES

Allen v. Illinois,  
478 U.S. \_\_\_\_\_,  
106 S.Ct. \_\_\_\_\_,  
92 L.Ed.2d 296 (1986)

3

Whitehead v. State,  
498 So.2d 863  
(Fla. 1986)

3

Williams III v. State,  
504 So.2d 392  
(Fla. 1987)

3

OTHER AUTHORITY

Fla.R.Crim.P. 3.701(d)(11)

3,4

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PETITIONER'S REPLY BRIEF ON THE MERITS

PRELIMINARY STATEMENT

Daniel F. Jagers, the criminal defendant and appellant below, will be referred to herein as Respondent. The State of Florida, the prosecution and appellee below, will be referred to herein as Petitioner.

Citations to the record on appeal will be indicated parenthetically as "R" with the appropriate page number(s). Citations to the Petitioner's initial brief on the merits will be indicated parenthetically as "PB" with the appropriate page number(s). Citations to Respondent's brief on the merits will be indicated parenthetically as "RB" with the appropriate page number(s).

STATEMENT OF THE CASE AND FACTS

Petitioner will rely upon its Statement of the Case and Facts set forth in its initial brief (PB 2-4).

ARGUMENT

ISSUE

WHETHER, PURSUANT TO ITS RECENT RULING IN WILLIAMS III V. STATE, 504 So.2d 392 (FLA. 1987), A COMMITMENT TO A MENTAL INSTITUTION FOR OTHER THAN A CRIMINAL CONVICTION AND THE SUBSEQUENT CONDITIONAL RELEASE OR SUPERVISION STATUS THAT EXISTED AT THE TIME OF THE CRIME, ARE VALID REASONS FOR DEPARTURE FROM THE GUIDELINES? [Certified Question].

Respondent, as did the lower tribunal, completely misconstrues the question that is before this Court. The trial judge did not rely upon the fact of Respondent's Missouri Commitment and status subsequent thereto as a reason for departure in and of itself. Rather he considered it as evidence, along with the testimony of Dr. Zeitouni and Respondent, that Respondent poses a continual danger to society--a valid reason for departure. See Whitehead v. State, 498 So.2d 863, 865 (Fla. 1986). So, the question does not turn upon whether the Missouri proceeding is civil or criminal in nature.<sup>1</sup> The question is whether Fla.R.Crim.P. 3.701(d)(11) and controlling authority prohibit the consideration of Respondent's Missouri commitment and subsequent status as an item of reliable evidence tending to show that Respondent poses a continual threat to society. As

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<sup>1</sup> Consequently, Respondent's reliance upon Allen v. Illinois, 478 U.S. \_\_\_\_, 106 S.Ct. \_\_\_\_, 92 L.Ed.2d 296 (1986), is entirely misplaced.

previously argued (PB 9-12), evidentiary consideration of Respondent's Missouri commitment and subsequent status offends neither the provisions of Fla.R.Crim.P. 3.701(d)(11), nor controlling authority and was therefore properly viewed as but one of many facts demonstrating Petitioner's continued danger to society or unamenability to rehabilitation.

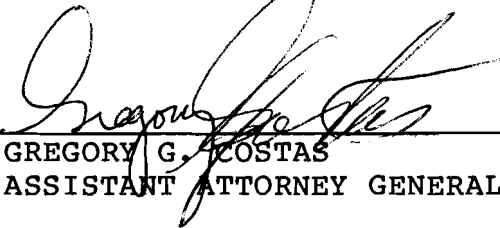
Regarding the remainder of Respondent's arguments against the trial judge's reasons for departure, Petitioner is of the view that they amount to nothing more than disagreement over the interpretation of controlling authority and its proper application to the case at bar. As a result, Petitioner will rely upon, as though fully restated here, its previous arguments on these matters.

CONCLUSION

Based upon the arguments advanced in Petitioner's initial and reply briefs and the authority cited therein, the decision of the lower court should be quashed and Respondent's sentence should be affirmed.

Respectfully submitted,

ROBERT A. BUTTERWORTH  
ATTORNEY GENERAL

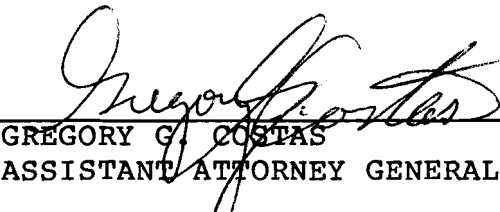
  
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COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been forwarded by hand delivery to P. Douglas Brinkmeyer, Assistant Public Defender, Post Office Box 671, Tallahassee, Florida 32302 on this 8<sup>th</sup> day of September, 1987.

  
\_\_\_\_\_  
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