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IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA, Petitioner, v. ROBERT A. LETTMAN, Respondent.	CASE NO. 72,731

PETITIONER'S BRIEF ON THE MERITS

ROBERT A. BUTTERWORTH
Attorney General
Tallahassee, Florida 32399

RICHARD G. BARTMON
Assistant Attorney General
111 Georgia Avenue - Suite 204
West Palm Beach, Florida 33401
Telephone (407) 837-5062

Counsel for Petitioner

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PRELIMINARY STATEMENT

The Petitioner herein was the Appellee and the Respondent the Appellant, in the Fourth District Court of Appeal. In this Brief, STATE OF FLORIDA will be referred to as the "Petitioner" and ROBERT A. LETTMAN, the "Respondent."

"A" means Petitioner's Appendix to this Brief, and "R" refers to the Record on Appeal, before the Fourth District.

STATEMENT OF THE CASE AND FACTS

On appeal to the Fourth District Court of Appeal, Respondent challenged his conviction and fifteen year sentence, for the third-degree murder of his daughter.

In its opinion, the Fourth District unanimously and summarily rejected Respondent's challenges to his conviction. Lettman v. State, 526 So.2d 207 (Fla. 4th DCA 1988). However, in analyzing Respondent's departure sentence of fifteen years (from a recommended range of three to seven years), the Fourth District found that said sentence was improperly based on three invalid reasons, and reversed Respondent's sentence, remanding for sentencing within the guidelines. Lettman, supra, at 208. Specifically, the Fourth District found, inter alia, that reliance on the factor of Respondent's violation and abuse of his daughter's trust, was invalid in this case, because the facts of Respondent's murder of his daughter, although "shocking," were not sufficiently "barbaric and grotesque" to warrant departure on this basis. Id. While recognizing that other district appellate decisions had concluded that such abuses of trust and authority by a family member was a proper justification for guidelines departure sentences, such a reason was permissible in limited circumstances. Id.

Furthermore, the Fourth District invalidated the trial court's reliance on vulnerability and tender age of the victim,

as a departure reason, based on Byrd v. State, 516 So.2d 107 (Fla. 4th DCA 1987). Id. The Byrd case concluded that vulnerability by age, unless combined with factors such as abuse of trust, is not alone sufficient as a departure reason. Byrd, supra, at 108.

Petitioner sought to invoke this Court's certiorari jurisdiction, based on alleged conflict between the Fourth District's ruling, and those of this and other appellate courts, on the validity of abuse of trust, and vulnerability of the victim, as valid reasons to support departure sentences. This Court accepted jurisdiction, on October 21, 1988.

Martha Lettman testified that Taneshia had "old bruises," from Appellant's prior beatings of his daughter (R, 34); that these beatings were administered as "discipline" or "chastising" of Taneshia, and had gone on since Taneshia was two. (R, 34, 40); and were conducted with a belt, or with Appellant's hands. (R, 34, 40).

In his statement, Appellant said he "all the time chastise" Taneshia in this manner, and that this had been occurring for "a long time." (R, 84, 85, 99, 100). Appellant admitted "chastising" Taneshia for crying all the time, and that Taneshia cried "a majority of the time," when her mother left the house for work. (R, 99). Appellant further admitted that on the day of Taneshia's murder, he struck her about nine times with a

belt, on her buttocks, back and legs, (R, 92), and then shook her "hard" and beat her several times again, when she did not urinate, as she had said she had to do. (R, 94-96, 98, 99).

Both doctors testified that Taneshia was unquestionably the victim of child abuse. (R, 124, 131-132, 180, 194). Dr. Deleo, after reviewing the autopsy reports, and observing Taneshia's stomach injuries, and photos, concluded that the bruises were consistent with having been produced by a belt or extension cord; were not accidental, and were not consistent with negligent CPR. (R, 124-132). Deleo further testified that Taneshia's head injuries, and brain swelling, were a result of beatings and shakings. (R, 126, 127). Dr. Ongley, who performed Taneshia's autopsy, testified that there were numerous bruises and welts, caused by a belt, to Taneshia's back, side and legs, and that these were both old and fresh in nature (R, 169-175); that Taneshia had a "remarkably swollen" brain, consistent with being thrown against a wall, and blood around the eye (R, 177, 179); and had severe internal hemorrhaging of the abdomen, caused by a "good amount of force." (R, 177). Ongley stated that shaking was not likely the cause of the head injury, and that trauma, not negligent CPR treatment, caused Taneshia's injuries to her stomach. (R, 179-185; 194, 195).

POINT ON APPEAL

WHETHER THE FOURTH DISTRICT ERRED, IN DISAPPROVING DEPARTURE SENTENCE, WHERE RESPONDENT'S MURDER OF INFANT DAUGHTER WAS DIRECT RESULT OF ABUSE OF POSITION OF TRUST, AND VICTIM'S EXTREME VULNERABILITY?

SUMMARY OF ARGUMENT

The Fourth District erred, in reversing Respondent's departure sentence, and invalidating the Circuit Court's reliance on Respondent's abuse of his infant daughter's trust, and his daughter's vulnerability due to her age of 2 years, 10 months, in sentencing him to a 15-year departure sentence, for third-degree murder. This Court, and other appellate courts, have approved and affirmed the validity of an abuse of the familial trust of a child-victim, as a valid basis for a departure sentence. This conclusion should especially apply, in crimes involving murder, where young children are victimized, due to this trust, in a parent's love, protection and support. The evidence herein unquestionably supported these conclusions, showing Respondent's physical abuse of his daughter, lasting from the time she was two years old, until she was nearly three, and resulting in her death.

The Fourth District further erred, in disapproving the victim's vulnerability, because of her age, as a valid basis for departure. The infant child's vulnerability herein, clearly permitted and facilitated Respondent's murder, and supported an enhanced sentence.

This Court should consider approval of a combined basis for departure, including an abuse of trust and vulnerability of the victim, should the Court reject either of these two factors, as an independent valid basis for departure.

ARGUMENT

FOURTH DISTRICT ERRED, IN DISAPPROVING DEPARTURE SENTENCE, WHERE RESPONDENT'S MURDER OF INFANT DAUGHTER WAS DIRECT RESULT OF ABUSE OF POSITION OF TRUST, AND VICTIM'S EXTREME VULNERABILITY.

The Fourth District specifically disapproved of the Circuit Court's imposition of a departure sentence of 15 years for Respondent, convicted of the beating death of his infant daughter. Lettman v. State, 526 So.2d 207, 208 (Fla. 4th DCA 1988). The appeals court concluded that the trial court 'court's reliance, on the abuse of the infant's trust by her father, and the victim's vulnerability and age, was inappropriate, because it was not comparatively "barbaric" or "grotesque" enough, to warrant departure. Because the trial court's reliance on abuse of familial trust, and vulnerability of young victims, has been specifically approved and particularly recognized by this and other appellate courts, the Fourth District's invalidation of Respondent's sentence, should be vacated.

Several cases, by this and other courts, have approved departure sentences, based on violations of familial trust, when such trust is clearly placed by the victim in a defendant, and is the factor that made it possible, for the defendant to commit the crime. Davis v. State, 517 So.2d 670, 674 (Fla. 1987); see also, Moore v. State, 530 So.2d 61, 64 (Fla. 1st DCA 1988); Hawkins v. State, 522 So.2d 488, 490 (Fla. 1st DCA 1988); Ross v. State, 478 So.2d 480, 482 (Fla. 1st DCA 1985); Williams v.

State, 462 So.2d 36, 37 (Fla. 1st DCA 1984). These decisions have expressly relied on very strong statements of public policy, to support departure sentences, when the abuse of trust involves a person in familial authority, over a child:

> ... for a child to be subjected to such an act [attempted sexual battery] by one in a position of familial authority to whom the child should be able to rely upon for protection and sanctuary from such vile conduct constitutes, by any standard, a substantial aggravating factor.

Ross, 478 So.2d, supra, at 482; Williams, 462 So.2d, at 37; see also, Jakubowski v. State, 494 So.2d 277, 279 (Fla. 2nd DCA 1986); Jefferson v. State, 489 So.2d 860, 862-863 (Fla. 1st DCA 1986); Stewart v. State, 489 So.2d 176, 178 (Fla. 1st DCA 1986). This approval appears to have been especially applied, in cases where young children were victimized, by crimes involving murder, sexual abuse and/or exploitation, by family members, involving some degree of combined treatment, of the circumstances of abuse of trust, and victim vulnerability, e.g., Jakubowski, 494 So.2d, supra, at 279 (third-degree murder of six-year old boy, by mother's live-in boyfriend); Jefferson, 489 So.2d, supra, at 862 (beating death of 20-month old infant); Stewart, 489 So.2d, at 178 (killing of 8-year old boy, by stepfather); Ross, 478 So.2d, at 481, 482 (attempted sexual battery of 12-year old niece, by uncle); Williams, 462 So.2d, at 37 (lewd and lascivious assault on 10-year old girl, by stepfather).

In this case, both factors were unquestionably presented by the evidence, beyond a reasonable doubt. Davis, 517 So.2d, at 672. Respondent's wife established Respondent's history of prior beatings of his daughter, since the victim was two years old, with his hands and/or a belt. (R, 34, 40). Respondent himself admitted that these beatings had gone on for "a long time," (R, 84, 85, 99, 100). Respondent additionally admitted having struck his daughter about nine times with a belt, on her buttocks, back and legs, (R, 92), then shaking her "hard" and beating her several times more. (R, 94-96, 98, 99). Both doctors testified that Taneshia Lettman was unquestionably the victim of child abuse, by deliberate beatings consistent with a belt or extension cord, and inconsistent with negligently-performed CPR, as claimed by Respondent. (R, 124-132). There was further testimony that Taneshia's bruises and welts were both old and fresh (R,169-175); that Taneshia had a remarkably swollen" brain, consistent with being thrown against a wall, and blood around the eye (R, 177, 179); and that the child had severe internal hemorrhaging of the abdomen, caused by a "good amount of force." (R, 177). Under these circumstances, there can be little question that the trial court's reference to the commission of this beating murder, by the infant's father, in violation of his position of trust, when the "child should be able to rely upon [Respondent] for love, care and protection" (R, 354-355), represented a valid

basis for departure. Davis; Moore; Hawkins; Jakubowski; Stewart; Ross; Williams.

The Fourth District's disapproval of this departure sentence was based on the panel's de novo interpretation, of the relative degree of "barbaric and grotesque circumstances." Lettman, 526 So.2d, supra, at 208. This analysis is not suggested or addressed, by Davis, or those cases cited herein, dealing with murder or abuse of infants and children by family members, both preceding and following Davis. Id.; but see, Hall v. State, 517 So.2d 692, 695 (Fla. 1988), discussed infra. Taneshia Lettman's trust and reliance on her father, for "love, care and protection," (R, 354-355), clearly facilitated and resulted in her murder, and formed its foundation. Davis; Moore.

Petitioner is clearly aware that in Hall, 517 So.2d, supra, at 695, this Court invalidated a trial court's reliance, in sentencing the defendants therein to a departure term, for aggravated child abuse, on the fact that the defendants held a "special position of trust," as the victims' natural parents. However, this Court based its conclusion, on the fact that the status of the defendants was factored-in the convicted crime of aggravated child abuse. Id. The same "inherent component"-type analysis would not apply to Respondent's third-degree murder conviction. Moreover, this Court did not expressly or impliedly

overrule the Davis decision, which has been relied on by other courts, subsequent to Hall, to affirm departure sentences, based on abuse of familial trust. Hawkins, supra; Moore, supra. Significantly, the First District, in applying the Hall decision to the circumstances in Hawkins, supra, observed that the abuse of an existing familial trust, between a defendant and victim, was not a factor, that was common to all sexual battery offenders. Hawkins, 522 So.2d, at 490. Thus, the application of Hall herein would not alter the conclusion, that the trial court's departure sentence, based on abuse of familial trust, was appropriate. Davis.

The Fourth District further erred, in concluding that the vulnerability and age of the victim (2 years, 10 months at her death), was an inappropriate independent basis for departure. Lettman v. State, 526 So.2d, at 308. This conclusion runs contrary to the approach of other courts, which have determined that when a crime is accomplished, as a result of the victim's vulnerability, due to young or advanced years, a departure sentence may be appropriately based on this circumstance. Harris v. State, 13 F.L.W. 2542, 2543 (Fla. 2nd DCA, November 18, 1988); Coleman v. State, 515 So.2d 314, 315 (Fla. 2nd DCA 1987); Cromer v. State, 514 So.2d 416, 417 (Fla. 1st DCA 1987), and cases cited therein. The determinations by these courts reflect apparent public policy, to protect those individual victims who, by virtue

of their age and/or vulnerability due to age, cannot protect themselves, and are hurt by the actions of defendants because of this vulnerability. Harris, supra; Cromer, supra. Clearly, the victim's status as an infant, and resulting vulnerability, permitted and facilitated Respondent's crime. Id.

If this Court rejects either abuse of trust, or vulnerability due to age, as an independent appropriate basis for departure, the combination of the two factors should be considered as appropriate. As earlier noted, several courts have found the combined aspect of a defendant's abuse of familial trust, and the vulnerability of the victim, to warrant a departure sentence. Stewart; Jakubowski. The approval of these factors, in tandem, would promote public policy, of permitting increased punishment for those defendants who violate or abuse a position of trust, making the crime possible, while also accommodating the concerns expressed previously by this Court, for avoiding widespread and unwarranted disparity in sentencing. Davis; Hall; State v. Mischler, 488 So.2d 523 (Fla. 1986).

Since the trial court did not abuse its discretion, in finding Respondent's abuse of his infant daughter's trust, and her vulnerability due to her infancy, supported a departure sentence of 15 years, and the facts clearly demonstrated these circumstances, this Court should quash the Fourth District's ruling, with instructions to reinstate Respondent's sentence. Davis.

CONCLUSION

Based on the foregoing authorities and arguments, Petitioner respectfully requests that this Court reverse the Fourth District's ruling in Lettman v. State, 526 So.2d 207 (Fla. 4th DCA 1988), and remand with instructions to reinstate Respondent's 15-year sentence.

Respectfully submitted,

ROBERT A. BUTTERWORTH
Attorney General
Tallahassee, FL 32399-1050

RICHARD G. BARTMON
Assistant Attorney General
111 Georgia Avenue - 204
West Palm Beach, FL 33401
Telephone (407) 837-5062

Counsel for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petitioner's Brief on the Merits has been forwarded, by courier, to ANTHONY CALVELLO, ESQUIRE, Assistant Public Defender, 301 North Olive Avenue, West Palm Beach, Florida 33401, this 3rd day of January, 1989.

Of Counsel