1-6-89

IN THE SUPREME COURT OF FLORIDA

ANDREW ALAN ABT,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

CASE NO. 73,312

PETITIONER'S BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

The Petitioner, Alan Andrew Abt, was the Appellant in the Fourth District Court of Appeal and the Defendant in the trial court. The Respondent was the Appellee and the Prosecution, respectively, in those lower courts. In the brief, the parties will be referred to by name.

The symbol "A" will be used to refer to the appendix which includes the decision of the district court of appeal. The symbol "R" will be used to refer to the record on appeal.

STATEMENT OF THE CASE AND FACTS

Andrew Alan Abt was convicted and adjudged guilty (R22) after a jury trial on an information charging him with armed burglary of a dwelling (Count I), robbery with a firearm (Counts II and III), and using a firearm during a felony (Count IV) (R19-21).[1] Mr. Abt was thereupon sentenced to serve three concurrent terms of twenty-five years in prison (Counts I - III) and a concurrent term of five years in prison on Count IV (R26). This guidelines departure sentence was justified by the trial court on the following basis:

> 1. The Defendant was convicted by a jury of two (2) counts of Armed Robbery, one (1) count of Armed Burglary and one (1) count of Possession of a Weapon during the course of a felony. Defendant was on escape status from extended confinement in the state system at the time of these offenses.
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> 2. His past indicates a history of criminal activity of an increasing serious nature. He has graduated from property crimes to crimes involving the threat of armed violence.
>
> 3. These crimes have increased in their severity and sophistication. The infliction of intentional emotional trauma of this magnitude to the victims must be severely sanctioned.
>
> 4. The instant case involves a purposeful night time intrusion into an occupied residence while armed. His purpose being to terrorize the occupants by threat of violence into handing over their possessions. The intentional nature of the crime demands

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1 For this Court's convenience, Mr. Abt appends to this brief copies of the Statements of the Facts filed by each party in his original appeal, Case No. 4-86-1005, outlining the evidence adduced at his trial.

a departure from the guidelines to punish the defendant and to set an example to the public.

5. The defendant's history indicates failures in the juvenile and adult system. Neither probation, community control, prison nor rehabilitation drug programs have deterred or rehabilitated this person.

(R30). But in Case No. 4-86-1003, the Fourth District Court of appeal reversed Mr. Abt's departure sentence, finding that all the reasons for departure were invalid except the second and first part of the third, which were essentially the same (R28-31).

On May 27, 1987, the trial court resentenced Mr. Abt to the same sentences previously imposed (R34-37). In a written order stating its reasons for again departing from the guidelines sentence, the trial court said:

1. The score sheet indicates a sentence range of 12 to 17 years. The Defendant was serving a state prison sentence when the instant offense occurred. He escaped in the month prior to this act. If he had been on probation, no written reasons would be necessary to impose a one cell deviation to 22 years. If he had been recently released from prison or probation, this in and of itself, would be sufficient for a significant deviation in sentence. This court for the most clear and convincing reasons states a defendant on escape status who commits multiple felonies involving personal violence for the primary aim of his personal economic benefit is equally deserving of a sentence deviation as a probationer or recent parolee.

2. His past criminal history indicates this is his third Burglary conviction along with two Grand Thefts and one felony Battery. His criminal history has witnessed an increase not only in the severity of his criminal propensities, but also in the sophistication of his planning. The

instant case concerns a planned Burglary of an occupied dwelling, Brooks v. State, 487 So.2d 68, occurring at night, Mather v. State, 498 So.2d 648, whose aim was not to steal but to take by armed force, under disguise, properties of helpless victims, Davis v. State, 458 So.2d 42, Grant v. State, 85-91 4th DCA 1-7-87, who were approached and attacked while asleep, Allen v. State, 86-1650 4th DCA 4-15-87. The conduct and method of this HOME INVASION Burglary was so outrageous and contemptible in and of itself, so as to demand a deviation for these most clear and convincing of reasons, Roberge v. State, 489 So.2d 82.

3. The terror this person committed on the victims was not inherent in the components of these crimes, Hannah v. State, 480 So.2d 718. The Home Invasion Burglary is a relatively new phenomenon, it combines and expands upon the worst elements of Burglary and Robbery into a new, more dangerous and abhorent crime not envisioned by the creator of these guidelines. A lesser sentence would be odious and repugnant to our sense of justice and not commensurate with the seriousness of the crime.

4. This defendant has, by his acts and history, exhibited a flagrant disregard for the criminal justice system. Adams v. State, 483 So.2d 121. He has been and is a threat to society. Middleton v. State, 498 So.2d 201. The guideline sentence is insufficient for his rehabilitation or deterrence. Baldwin v. State, 494 So.2d 503.

(R38-39).

Notice of appeal from Mr. Abt's second departure sentence was timely filed on June 19, 1987 (R40).

SUMMARY OF THE ARGUMENT

1. Section 921.001(5), Florida Statutes, which seeks to preclude remand of a guidelines departure sentence although several of the reasons for departure have been found invalid on appeal, addresses a matter of procedure which is within the exclusive province of this Court to regulate. As such, it is in violation of Article V, Section 2(a) of the Florida Constitution. Should this Court determine that the statute is in fact substantive, then its application against Mr. Abt, whose crime was committed prior to its effective date, violates the constitutional proscription against ex post facto laws.

2. All the trial court's reasons for imposing a departure sentence in this case are invalid, since they are either unsupported by the record, or involve matters already scored in arriving at the guidelines sentence, or make reference to factors inherent in the nature of the crimes for which Mr. Abt was convicted. Mr. Abt's departure sentence must, therefore, be reversed for imposition of a guidelines term.

ARGUMENT

POINT I

SECTION 921.001(5) MAY NOT BE APPLIED AGAINST MR. ABT TO PRECLUDE REMAND FOR RESENTENCING WHERE ONLY ONE OF SEVERAL REASONS GIVEN FOR HIS GUIDELINE DEPARTURE SENTENCE WAS HELD VALID ON APPEAL.

In its decision reviewing Mr. Abt's appeal from the reimposition of a guidelines departure sentence, the en banc Fourth District Court of Appeal held that of seven reasons given by the trial court to justify Appellant's sentence, only one could be found valid. Recognizing that this Court's decision in Albritton v. State, 476 So.2d 158 (Fla. 1985) required reversal of such a sentence for a determination by the trial court whether it would impose the same departure sentence based solely on the single reason remaining, the Fourth District Court of Appeal nevertheless declined to reverse, relying on the intervening[2] enactment by the legislature of Section 921.001(5), Florida Statutes (1987) which provides in pertinent part:

> When multiple reasons exist to support a departure from guidelines sentence, the departure shall be upheld when at least one circumstance or factor justifies the departure regardless of the presence of other circumstances or factors found not to justify departure.

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2 Appellant's offense was committed May 18, 1985 (R19). His first appeal, which resulted in an Albritton reversal for reconsideration of Appellant's departure sentence in light of the invalidity of all but one of the reasons given by the trial court for departing, was decided on April 1, 1987 (R28). Appellant was resentenced on May 27, 1987 (R34-37). Appellant's notice of appeal from the resentence was filed on June 19, 1987 (R40). Section 921.001(5), Florida Statutes (1987) became effective on July 1, 1987. Ch. 87-110, Laws of Florida.

The Fourth District Court of Appeal adopted the First District Court of Appeal's holding in Felts v. State, 13 F.L.W. 205 (Fla. 1st DCA Jan. 14, 1988) that Section 921.001(5) is procedural in nature and thus does not violate the ex post facto clause when applied against defendants like Mr. Abt, who committed their crimes before its effective date. The Fourth District Court of Appeal noted but without explanation decided not to follow the contrary holdings of the Second and Third District Courts of Appeal in Hoyte v. State, 518 So.2d 975 (Fla. 2d DCA 1988) and State v. Mesa, 520 So.2d 328 (Fla. 3d DCA 1988).

The Fourth District Court of Appeal's reliance on Felts and Section 921. 001(5) to avoid reversal of Mr. Abt's departure sentence is misplaced. For if, as the Fourth and First District Courts have apparently held, Section 921.001(5) is a matter of procedure not controlled by the ex post facto clause of the United States and Florida Constitutions, then it is unconstitutional.

Article V, Section 2(a), Florida Constitution, provides in pertinent part:

> The supreme court shall adopt rules for the practice and procedure in all courts including the time for seeking appellate review, the administrative supervision of all courts, the transfer to the court having jurisdiction of any proceeding when the jurisdiction of another court has been improvidently invoked, and a requirement that no cause shall be dismissed because an improper remedy has been sought. These rules may be repealed by general law enacted by two-thirds vote of the membership of each house of the legislature.

(Emphasis added). Thus, the legislature has no constitutional authority to enact any law relating to judicial practice and procedure. Graham v. Murrell, 462 So.2d 34 (Fla. 1st DCA 1984). For purposes of defining the province of the courts, a rule of procedure prescribes the method or order by which a party enforces substantive rights or obtains redress for their invasion. Substantive law, on the other hand, creates such rights. Practice and procedure are the machinery of judicial process as opposed to its product. Military Park Fire Control Tax District No. 4 v. DeMarois, 407 So.2d 1020 (Fla. 4th DCA 1981). Thus, in DeMarois, the district court held that a statute which purported to give priority to certain appeals over other civil cases violated the constitutional delegation of procedural issues to the courts. And any statute which conflicts with the judicial determination in a matter of procedure is not controlling. Rhynes v. State, 312 So.2d 520 (Fla. 4th DCA 1975).

The prescribed punishment for a criminal offense is substantive. Benyard v. Wainwright, 322 So.2d 473 (Fla. 1976). But sentencing itself is a judicial function governed by the rules of procedure. For example, regulation of presentence investigation reports is within the purview of the Supreme Court's constitutional rule-making power. A statute requiring presentence investigation reports for defendants found guilty of felonies was in violation of the doctrine of separation of powers as a legislative attempt to create a rule of procedure for the courts. Johnson v. State, 308 So.2d 127 (Fla. 1st DCA 1975), affirmed Johnson v. State, 346 So.2d 66 (Fla. 1977).

Applying these principles to the present case, it is readily apparent that the sentence to which a defendant is exposed when he commits a crime is a matter of substantive law which must be legislatively defined. The sentencing guidelines themselves, then, are appropriately articulated in the statutes. But the mechanics of their imposition may be guided by procedural rules promulgated by the Supreme Court. Again, the right to appeal from a guidelines departure sentence is substantive, and thus for the legislature to determine. See, Abney v. United States, 431 U.S. 681, 97 S.Ct. 2034, 52 L.Ed.2d 651 (1977). This includes defining when an appeal is authorized: for instance, a legislative enactment which restricts a defendant from appealing the extent of his guidelines departure sentence defines when and from what type of order an appeal may be taken, a proper legislative function. Austin v. Town of Oviedo, 92 So.2d 648, 650 (Fla. 1957). Consequently, ch.86-273, Laws of Florida, which precludes appellate review of the extent of a guidelines departure controls a matter of substantive law and so does not violate the doctrine of separation of powers. Booker v. State, 514 So.2d 1079 (Fla. 1987).

Quite different is the issue at bar, however. For the legislature has unquestionably authorized appeal from a guidelines departure sentence for the purpose of testing the validity of the reasons for departure. Section 921.001(5) therefore purports to govern not the appealability of an order, but rather to control a part of the appellate process itself. The legislature has here attempted to tell the appellate courts, which have been given the

power to review, in what manner they may conduct that review. But review of the validity of the guidelines departure reasons -- and the fashioning of an appropriate remedy where some or all of those reasons are found to be invalid -- is of just that type of judicial scrutiny which has always been a part of the appellate function, as this Court noted by its quotation, in Booker, 514 So.2d at 1082, n.2, of the following passage from United States v. Hartford, 489 F.2d 652, 654 (5th Cir. 1974):

> Appellate modification of a statutorily authorized sentence, however, is an entirely different matter from the careful scrutiny of the judicial process by which the particular punishment was determined. Rather than an unjustified incursion into the province of the sentencing judge, this latter responsibility is, on the contrary, a necessary incident of what has always been appropriate review of criminal cases.

(Emphasis original).

Therefore, Section 921.001(5) seeks to effect an improper legislative interference with the appellate process, a function over which control is constitutionally limited to the courts. As such, it cannot serve as authorization to negate the appropriately arrived at determination of this Court in Albritton as to the effect of an appellate court's finding that some of a trial court's reasons for departure are valid but some are invalid.

This Court itself has implicitly suggested its rejection of a Felts-type analysis. As outlined in Powell v. State, 515 So.2d 1294, 1297 at n.1 (Fla. 2d DCA 1987), this Court has already declined to adopt a Sentencing Guidelines Commission recommendation that a departure sentence be upheld where a single valid

reason for departure remains after appellate review has determined other reasons for departure relied on by the sentencing judge to be invalid. Rules of Criminal Procedure Sentencing Guidelines -- Amendments, 12 F.L.W. 162 (Fla. April 2, 1987); Rules of Criminal Procedure -- Amendment -- Sentencing Guidelines, 509 So.2d 1088 (Fla. 1987). In the latter opinion, the Court noted the many amendments to the sentencing guidelines which were legislatively enacted (including that at issue in this case) and stated: "We have not considered those amendments and make no ruling as to their validity in this opinion." But since then, this Court has decided Griffis v. State, 509 So.2d 1104 (Fla. 1987), wherein it held that a sentencing judge's boiler plate recitation that he would have imposed the same sentence based on any one of the reasons given for departure does not obviate the need to remand the case for resentencing where other reasons for departure are found invalid. In so holding, this Court saw "no reason to recede from our position of December 1985," despite the intervening legislative enactment of Section 921.001(5):

> 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.

See also, Anthony v. State, 524 So.2d 655, 657, n.3 (Fla. 1988).

This result is supported by logic as well as the law. A blanket rule requiring affirmance of a departure sentence even where nine of ten reasons for departure were found invalid would totally negate the proper discretionary role of the sentencing judge to make a reasoned decision as to the appropriate sentence to be imposed based on the severity of the valid justification for the departure sentence: having once determined that departure is justified, the sentencing judge is not presumed to automatically impose the maximum sentence in all cases, but he is to consider, based on the aggravating circumstances correctly before him, what sentence, albeit outside the guidelines, will best serve the needs of justice. See, Felts v. State, supra, 13 F.L.W. at 209, n.3 (Zehmer, J., concurring and dissenting). Depriving the trial judge of the opportunity to perform this role by taking away his obligation to reconsider his departure sentence when some of his reasons for departure sentencing are found invalid in effect strips the judge of his sentencing discretion in a backdoor way not contemplated by the sentencing guidelines scheme.

Consequently, the legislative enactment of Section 921.001(5) can have no effect on this appeal or any other, since it is an unconstitutional attempt by the legislature to govern a matter of procedure which is within this Court's exclusive province to determine. The lower court's decision in Abt, which completely ignores this defect, therefore, cannot be approved.

Moreover, even of Mr. Abt's argument in this regard is rejected, and Section 921.001(5) is viewed as a change in substantive sentencing law so as to avoid the constitutional attack urged, supra, Section 921.001(5) cannot be invoked against Mr. Abt in the instant case. For in that event, the retroactive application of Section 921.001(5) to the instant cause would violate the ex post facto clauses of the United States and Florida Constitutions. Hoyte, Mesa, supra. Clearly, Mr. Abt suffers detriment as a result of this new legislative pronouncement: under prior law as enunciated in Albritton v. State, supra, Mr. Abt's sentence was remanded to the trial court when the appellate forum found all but one of the reasons justifying his departure sentence to be invalid in Mr. Abt's first appeal. Now, the trial judge having failed to comply with the appellate court's mandate to reconsider Mr. Abt's sentence based on the single remaining valid departure reason, Mr. Abt may be denied any relief for the exact same error merely because of the intervening enactment of amended Section 921.001(5). The penalty against Mr. Abt for the trial court's mistake is not inconsiderable: his guidelines sentence of twelve (12) to seventeen (17) years in prison has been transformed into a twenty-five year term, yet the Fourth District Court of Appeal's decision would deny Appellant the fair redress that he received just a year ago in his first appeal of this same sentence. Miller v. Florida, ___ U.S. ___, 107 S.Ct. 2446, 96 L.Ed.2d 351 (1987) prohibits such a result. The operation of Section 921.001(5) in cases

where the offense was committed before its effective date must thus be held to violate the prohibition against ex post facto laws.

Under either interpretation of the statute, however -- as procedure or substance -- the Fourth District Court of Appeal erred in applying it against Mr. Abt.

POINT II

ALL THE REASONS GIVEN BY THE TRIAL COURT FOR DEPARTING FROM MR. ABT'S GUIDELINES SENTENCE OF 12-17 YEARS IN PRISON ARE INVALID.

Mr. Abt's guidelines sentence was twelve to seventeen years in prison, but the trial court resentenced him to concurrent twenty-five and five year prison terms. This departure sentence, Mr. Abt's second in this case, was purportedly justified in a written order (R38-39). But examination of the order reflects that many of the reasons stated for departure are the same as those which had already properly been held invalid by the Fourth District Court of Appeal in its prior decision in this case (R28-31), and the rest are either not supported by the record or are otherwise invalid. Consequently, this cause must again be remanded.

Turning to the specific reasons for departure given by the trial court, the first reason[3] is essentially the same as the first reason[4] for departure accompanying the original sentence,

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3 "1. The score sheet indicates a sentence range of 12 to 17 years. The Defendant was serving a state prison sentence when the instant offense occurred. He escaped in the month prior to this act. If he had been on probation, no written reasons would be necessary to impose a one cell deviation to 22 years. If he had been recently released from prison or probation, this in and of itself, would be sufficient for a significant deviation in sentence. This court for the most clear and convincing reasons states a defendant on escape status who commits multiple felonies involving personal violence for the primary aim of his personal economic benefit is equally deserving of a sentence deviation as a probationer or recent parolee."

4 "The Defendant was convicted by a jury of two (2) counts of Armed Robbery, one (1) count of Armed Burglary and one (1) count of Possession of a Weapon during the course of a felony. Defendant was on escape status from extended confinement in the state system at the time of these offenses."

and it had already been found invalid by the lower appellate court,[5] as it is based upon Appellant's status under legal restraint, for which points are provided on the guidelines scoresheet, and on his alleged commission of the crime of escape, for which he was neither charged nor convicted. State v. Tyner, 506 So.2d 405 (Fla. 1987).

The second reason for departure refers to Appellant's past criminal history of two prior burglary convictions, two grand thefts and one aggravated battery.[6] For these offenses, of course, Appellant has already received points on his guidelines scoresheet. The departure order goes on to refer to the "increase not only in the severity of his criminal propensities, but also in the sophistication of his planning." But the record does not support this assertion, which is not buttressed by any recitation of the manner in which the prior crimes were committed nor of how, for example, an armed burglary in which no one was injured at all, see, Appendix (A1-4), is more serious than an aggravated battery, which requires proof of permanent bodily injury or use of a deadly weapon. See, Williams v. State, 500 So.2d 604 (Fla. 5th DCA 1986).

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5 Appendix, A5-8.

6 "2. His past criminal history indicates this is his third Burglary conviction along with two Grand Thefts and one felony Battery. His criminal history has witnessed an increase not only in the severity of his criminal propensities, but also in the sophistication of his planning...."

In fact, the burglars who perpetrated the instant offenses were extraordinarily polite and non-threatening, under the circumstances: they carefully ascertained that none of the jewelry they were taking had special sentimental or heirloom value. They returned $10 to the victims before leaving so they could have something for breakfast (Appendix, A1). The victims were thus not physically assaulted or threatened, other than what is inherent in the commission of the robberies. Thus, the facts of the instant case do not suggest such egregious and outrageous behavior beyond the norm of any burglary/robbery as to justify a guidelines departure sentence. The trial court's second and third reasons for departure are thus unsupported by the record.[7]

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7 "[2] ... the instant case concerns a planned Burglary of an occupied dwelling, Brooks v. State, 487 So.2d 68, occurring at night, Mather v. State, 498 So.2d 648, whose aim was not to steal but to take by armed force, under disguise, properties of helpless victims, Davis v. State, 458 So.2d 42, Grant v. State, 85-91 4th DCA 1-7-87, who were approached and attacked while asleep, Allen v. State, 86-1650 4th DCA 4-15-87. The conduct and method of this HOME INVASION Burglary was so outrageous and contemptible in and of itself, so as to demand a deviation for these most clear and convincing of reasons, Roberge v. State, 489 So.2d 82.

"3. The terror this person committed on the victims was not inherent in the components of these crimes, Hannah v. State, 480 So.2d 718. The Home Invasion Burglary is a relatively new phenomenon, it combines and expands upon the worst elements of Burglary and Robbery into a new, more dangerous and abhorent crime not envisioned by the creator of these guidelines. A lesser sentence would be odious and repugnant to our sense of justice and not commensurate with the seriousness of the crime."

Moreover, these facts also negate the trial court's additional reliance on the victim's emotional trauma. In order to support a guidelines departure, emotional trauma must be of such an aggravated nature as to exceed that which is inherent in the crime or must have suffered demonstrable physical manifestations of their traumas. As this Court has observed,

> ... almost all victims of a crime will feel some type of trauma; this type of trauma which usually and ordinarily results from being a victim of a crime is inherent in the crime and may not be used to justify a departure.

State v. Rousseau, 509 So.2d 281, 284 (Fla. 1987); see also, Hall v. State, 517 So.2d 692, 694 (Fla. 1988). No trauma other than that involved in any robbery-burglary was established in the present case. Nor did the victims below show any demonstrable physical manifestations of their emotional trauma. Consequently, the trial court's departure on this basis was invalid. Indeed, the Fourth District Court of Appeal had held as much in Mr. Abt's first appeal from his departure sentence.[8]

Finally, the trial court relies on its characterization of Petitioner's "flagrant disregard for the criminal justice system," his "threat to society" and the insufficiency of the guidelines sentence "for his rehabilitation or deterrence."[9] Since

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8 Holding invalid the following reason for departure:

> "3. ... The infliction of intentional emotional trauma of this magnitude to the victims must be severely sanctioned."

9 4. This defendant has, by his acts and history, exhibited a flagrant disregard for the criminal justice system. Adams v. State, 483 So.2d 121. He has been and is a threat to society. Middleton v. State, 498 So.2d 201. The guideline sentence is insufficient for his rehabilitation or deterrence.

this reason is essentially based on Appellant's prior record, which has already been scored, it is likewise invalid. E.g., Johnson v. State, 503 So.2d 955 (Fla. 2d DCA 1987). Thus, the defendant's violent pattern of misconduct indicating serious danger to the community was held not a valid reason to depart by the Fourth District Court of Appeal in Baldwin v. State, 494 So.2d 503 (Fla. 4th DCA 1986). Neither is Mr. Abt's failure to be rehabilitated in the past a valid reason to depart from a guidelines prison sentence. E.g., Gibson v. State, 510 So.2d 1191 (Fla. 1st DCA 1987). The Second District Court of Appeal's decision in Booker v. State, 482 So.2d 414 (Fla. 2d DCA 1985) does not suggest a contrary result. Booker involved a departure prison sentence from a guidelines recommendation of non-state prison sanctions, enhanced to 12-30 months in prison or community control by the one cell bump permissible for probation violation. The defendant had already violated probation on numerous previous occasions, and since the function of the non-state prison sanction and the short, 12-30 month prison sentence provided by the guidelines in Booker was to rehabilitate the defendant, his failure to take advantage of prior, continued attempts at rehabilitation could validly be taken into consideration in deciding not to impose the guidelines sentence in that case. Sub judice, however, it is clear that rehabilitation is not the main goal of the

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Baldwin v. State, 494 So.2d 503.

12-17 year prison term provided by the guidelines in the present case. Thus, the rational underlying Booker does not apply to the instant case and cannot support Mr. Abt's departure sentence.

Consequently, each of the trial court's reasons to depart from the guidelines sentence in this case in unfounded. Under these circumstances, the appropriate remedy is to reverse Appellant's departure sentence and remand this cause with directions to resentence Appellant within the guidelines.

CONCLUSION

Based on the foregoing argument and the authorities cited therein, Mr. Abt requests that this Court reverse the decision of the district court of appeal below and remand this cause with directions to resentence Mr. Abt within the sentencing guidelines.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to JOHN W. TIEDEMANN, Assistant Attorney General, Elisha Newton Dimick Building, Suite 204, 111 Georgia Avenue, West Palm Beach, Florida, 33401 by courier this 12th day of December, 1988.

Of Counsel