

IN THE SUPREME COURT OF FLORIDA

**FILED**  
SID J. WHITE

JUN 6 1998

CLERK, SUPREME COURT

By \_\_\_\_\_  
Deputy Clerk

CHARLIE BROWN, JR.,

Petitioner,

v.

CASE NO. 73,590

STATE OF FLORIDA,

Respondent.

ANSWER BRIEF OF RESPONDENT

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ANSWER BRIEF OF RESPONDENT

PRELIMINARY STATEMENT

Petitioner, Charlie Brown, Jr., defendant below, will be referred to herein as "Petitioner." Respondent, the State of Florida, will be referred to herein as "the State." References to the record on appeal will be by the symbol "R" followed by the appropriate page number and references to the transcript of proceedings will be by the symbol "T" followed by the appropriate page number.

STATEMENT OF THE CASE AND FACTS

Petitioner's statement of the case and facts is acceptable to Respondent for the sole purpose of a proper disposition of this cause on meritorious review. Respondent would further rely on the facts as set forth in the opinion below of the First District Court of Appeal in Brown v. State, 535 So.2d 671 (Fla. 1988).

SUMMARY OF ARGUMENT

Disregard for the law and contempt for the judiciary is a valid reason to depart from the recommended guidelines sentence when supported by an adequate factual basis not common to all criminal defendants. In this case, the First District Court of Appeal found that the trial court supported its disregard-contempt ground with the fact that Petitioner committed the instant armed robberies shortly after being released on bond. This is an adequate independent ground sufficient to support the departure in this case. Moreover, the sentence should also be approved based on the trial court's remaining reasons, the validity of which the appellate court chose to pass upon.

ARGUMENT

ISSUE

THE FIRST DISTRICT'S OPINION UPHOLDING LACK OF REGARD FOR THE LAW AND THE JUDICIARY AS A VALID BASIS TO DEPART FROM THE SENTENCING GUIDELINES SHOULD BE APPROVED.

Petitioner is requesting this Court to quash the decision of the First District Court of Appeal in Brown v. State, 535 So.2d 671 (Fla. 1st DCA 1988). In that opinion, the Court found that Petitioner's lack of regard for the law and the judicial system was a permissible ground for departure from the sentencing guidelines. Id. at 535. On April 14, 1989, this Court accepted jurisdiction based on Petitioner's cited conflict with the following cases:

1. Hendrix v. State, 475 So.2d 1218 (Fla. 1985).
2. Hendsbee v. State, 497 So.2d 718 (Fla. 2d DCA 1986).
3. Scott v. State, 488 So.2d 146 (Fla. 3d DCA 1986).
4. Weir v. State, 490 So.2d 234 (Fla. 4th DCA 1986).
5. Madlock v. State, 489 So.2d 848 (Fla. 5th DCA 1986).
6. Lee v. State, 486 So.2d 709 (Fla. 5th DCA 1986).

Petitioner contends that the foregoing cases represent "better-reasoned" decisions in comparison to the decision under review and those cases cited therein. However, a cursory review of those opinions demonstrates that there in fact was no reasoning offered in support of the rejection of disregard for

the law and the judiciary as a basis for departure. It was merely a summary rejection based on the trial court's order in each case. Here, the trial court's disregard contempt finding was set forth as follows:

Defendant's conduct displays a lack of regard and a contempt for the law and the judicial system. Despite the Court's recent favorable rulings allowing defendant to replead his prior charges and providing for defendant's release on bond, defendant showed little regard for the judicial process by committing armed robbery. Further, defendant directly violated the conditions of his release from prison which the Court set forth in its Order for Bail. Specifically, said Order provided that defendant was required to reside with his father and that defendant was not to leave his father's residence without being accompanied by his father except when defendant was at work. The Order also allowed one half ( $\frac{1}{2}$ ) hour before and after work for defendant to get to and from work. Defendant's failure to abide by these conditions demonstrates his direct contempt for the judicial system and warrants an upward departure from the sentencing guidelines. Santana v. State, 507 So.2d 680 (Fla. 2d DCA 1987); Fry v. State, 497 So.2d 964 (Fla. 1st DCA 1986); Fuller v. State, 488 So.2d 594 (Fla. 2nd DCA 1986).

(R 61). The First District found Petitioner's failure to abide by the foregoing conditions coupled with his commission of the instant armed robberies shortly after his release on bond is an adequate factual basis demonstrating a contempt for the judicial system. Brown at 672.



Respondent would liken this case to that of Williams v. State, 484 So.2d 71 (Fla. 1st DCA 1986), approved 504 So.2d 392 (Fla. 1987). In Williams, this Court held that although a departure based solely upon a defendant's prior criminal record is invalid under Hendrix v. State, 475 So.2d 1218 (Fla. 1985), the trial court's description of Williams' frequent contacts with the criminal justice system was something substantially more than a mere reference to his prior criminal record and was sufficient to justify a departure from the presumptive sentence. 504 So.2d at 393. The same seasoning applies here. Unlike those cases cited by Petitioner, the trial court's descriptive narration setting forth the independent factual basis to demonstrate a contempt for the judicial system was something substantially more than a mere reference to Petitioner's lack of regard and contempt for the judiciary. In fact, the trial court described Petitioner's short timing between his release on bond and his armed robbery offenses as proof of his disregard for the judicial process (R 61). The First District recognized such as further support for upholding the disregard-contempt reason as a basis for departure. 535 So.2d at 672. Ironically, the timing of each offense in relation to prior offenses and release from incarceration or supervision was one of the bases relied upon by this Court in Williams, supra, to uphold the trial court's description of Williams' prior criminal record as a reason for departure. The undersigned would request this Honorable Court to afford the State the same consideration in this case. As

noted in Williams, timing is not an aspect of a defendant's prior criminal history which is factored in to arrive at a presumptive guidelines sentence. 504 So.2d 393. Although it can be said that every criminal defendant has a lack of regard and contempt for the judiciary, the commission of an armed robbery just 2 months after being released on bond is not always a basis to support such disregard and contempt. Here, the First District found timing to be an adequate factual basis for the disregard-contempt ground and that finding should be approved by this Court.

Furthermore, in the interest of judicial economy, Respondent would urge this Court to approve the trial court's departure based on the remaining reasons as the First District chose not to pass upon the validity thereof. Brown, supra at 673.

As noted by the trial court, Petitioner displayed a flagrant disregard for the safety of innocent bystanders by pointing a firearm at patrons of the bank which was being robbed and by threatening them with great bodily harm (R 60). Such a reason has specifically been approved by this Court as a valid basis to exceed the presumptive guidelines sentence. Scurry v. State, 489 So.2d 25 (Fla. 1986). The court's reason is factually supported by the record (T 30-37).

The trial court's second reason for departure was based on the fact that Petitioner was arrested for the present offense just 2 months after his release from incarceration as a result of an Order Allowing Defendant To Withdraw Guilty Plea (R 60). As argued above, this reason was also used as a factual basis to support the disregard-contempt ground and has also been upheld by this Court as a valid departure basis. Williams, supra.

The trial court's final reason was the fact that the armed robberies were committed pursuant to a premeditated design. The State concedes that such a reason has been rejected by this Court in Hansbrough v. State, 509 So.2d 1081 (Fla. 1987), where it was held that premeditation is an inherent component of any robbery.


Nevertheless, given the validity of at least one of the reasons, the departure sentence must be affirmed.

CONCLUSION

In light of the foregoing argument and citations of authority, Respondent respectfully urges this Honorable Court to approve the departure sentence imposed herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been forwarded by U.S. Mail to Neal L. Betancourt, Esquire, 221 E. Church Street, Jacksonville, Florida 32202, this 6<sup>th</sup> day of June , 1989.

  
JOHN M. KOENIG, JR.  
Assistant Attorney General