

IN THE SUPREME COURT OF FLORIDA

ROGER BRANAM

Petitioner,

v.

CASE NO. 73,924

STATE OF FLORIDA,

Respondent.

FILED
SID J. WHITE

MAY 11 1989

CLERK, SUPREME COURT

By _____
Deputy Clerk

MERITS BRIEF ON CERTIFIED QUESTION
FROM FLORIDA DISTRICT COURT OF APPEAL
SECOND DISTRICT

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SUMMARY

The purpose of sentencing guidelines is to make sentencing more uniform throughout Florida. The trial court should impose a sentence to bring the sentence within the guidelines or as close thereto as possible. It is the exception, rather than the rule, to sentence from without the guidelines.

CERTIFIED QUESTION

WHEN THERE ARE MULTIPLE CONVICTIONS
AND MAXIMUM SENTENCES WHICH IN THE
AGGREGATE ARE LESS THAN CALLED FOR BY
THE SENTENCING GUIDELINES SCORESHEET,
MUST A TRIAL JUDGE IMPOSE CONSECUTIVE
SENTENCES IN ORDER TO BRING THE SENTENCES
WITHIN THE GUIDELINES OR AS CLOSE THERETO
AS POSSIBLE.

(As Stated by Petitioner)

ARGUMENT

Petitioner prosecuted a direct appeal from his judgment and sentence; and prevailed on a sentencing issue. See Branam v. State, 526 So.2d 117 (Fla. 2d DCA 1988). On remand, the trial court followed the mandate to the letter; and, Petitioner appealed. The Second District affirmed. See Branam v. State, 540 So.2d 158 (Fla. 2d DCA 1989) [West Reserved Citation]. The Court below certifies the following question to this Court:

When there are multiple convictions and maximum sentences which in the aggregate are less than called for by the sentencing guidelines scoresheet, must a trial judge impose consecutive sentences in order to bring the sentences within the guidelines or as close thereto as possible?

(Pet.App. 1, p.3)

For purposes of brevity and clarity, Respondent does adopt and incorporate by reference the holding of the Second District:

We hold that the sentencing guidelines law takes precedence over the concurrent-consecutive statute for various reasons. First, the guidelines law was enacted subsequent to section 921.16, Florida Statutes (1987) and thus would be presumed

to be the latest expression of legislative intent. Second, and by analogy, it has been held that the guidelines law takes precedence over the earlier statute dealing with habitual offenders. See Whitehead v. State, 498 So.2d 863 (Fla. 1986). Finally, in a case where consecutive sentences would exceed the guidelines, we have no doubt that the judge's discretion under section 921.16, Florida Statutes (1987) would also be superseded by the guidelines, in that case making concurrent sentences mandatory. It is obvious that in this case the closet that the judge can come to sentencing within the guidelines is to impose consecutive sentences.

(Pet.App. 1, p.3)

At bar, the trial court complied with the opinion and mandate of the Second District in its sentencing. In State v. Christian, 443 So.2d 264 (Fla. 2d DCA 1984), Judge Grimes writes:

When a case has been once decided by this court on appeal, and remanded to the circuit court, and disposed of by its decree, is considered as finally settled. The circuit court is bound by the decree, is considered as finally settled. The circuit court is bound by the decree as law of the case, and must carry it into execution according to the mandate. That Court cannot vary it, or examine it for any other purpose than execution; or give any other or further relief; or review, even for apparent error, upon any matter decided on appeal; or intermeddle with it, further than to settle so much as has been remanded."

(Text of 463 So.2d at 265)

Thus, the trial court, at bar, obeyed the mandate of the Second District following remand. The change in sentencing followed the cross-appeal of your Respondent in which the Court below granted relief. The sentence was successfully

challenged; thus, the consecutive nature of the term comports with the mandate of the court below. See, Branam v. State, 526 So.2d 117 (Fla. 2d DCA 1988). The remand was for sentencing on the sexual battery with threats of force or violence, attempted sexual battery and, false imprisonment. Respondent continues to urge that the sentencing below is lawful and controlled by law of the case. The Second District had no option but to affirm the sentencing as one being in conformity with its mandate rendered in Branam I.

Alternatively, had the consecutive sentencing exceeded the guidelines, the trial court would have been bound to have made concurrent sentences mandatory. It is the policy of this State to sentence within the guidelines; and, that policy has not been breached at bar.

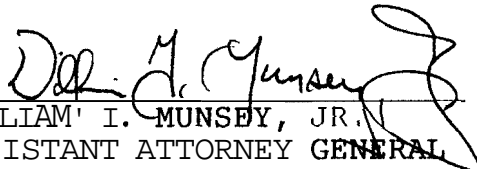
The purpose of the sentencing guidelines is to make sentencing more uniform through Florida by eliminating unwarranted variation in the sentencing process. See, Fla.R.Crim.P. 3.701(b) The only prohibition is that where a recommended guidelines sentence is more severe than the statutory maximum sentence, the latter controls. See, Scott v. State, 527 So.2d 911 (Fla. 3d DCA 1988) and Fla.R.Crim.P. 3.701(d)(10). There is no breach of this rule at bar; and, the holding below is in conformity with the application of guidelines to Florida sentences.

CONCLUSION

Wherefore, based on the foregoing reasons, argument, and authority, Respondent would pray that this Court make and file an opinion answering the question certified from below in the affirmative.

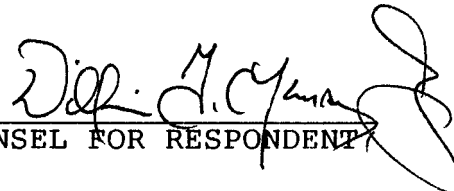
Respectfully submitted,

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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 Howard J. Shifke, Esquire, Anthony F. Gonzalez, P. A., 701 N. Franklin Street, Tampa, Florida 33602 this 9th day of May, 1989.


COUNSEL FOR RESPONDENT