

IN THE SUPREME COURT OF FLORIDA

**FILED**  
SID J. WHITE

JUN 10 1969

CLERK, SUPREME COURT

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

CASE NO: 74,209

JOSEPH D'ANGELO,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

RESPONDENT'S BRIEF ON JURISDICTION

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PRELIMINARY STATEMENT

Respondent was the Appellee in the District Court of Appeal and was the prosecution in the trial court. Petitioner was the Appellant in the appeal proceedings and the defendant at the trial.

The symbol "A" denotes Petitioner's appendix which contains the District Court's opinion.

STATEMENT OF THE CASE AND FACTS

Respondent accepts Petitioner's statement with the following additions:

In D'Angelo v. State the District Court found as a valid reason for departure that the crime was committed in a well organized and professional manner. (A 2) The Court cited to Young v. State, 502 So.2d 1347 (Fla. 2nd DCA 1987).

No transcript of the trial has ever been made a part of the record on appeal.

SUMMARY OF THE ARGUMENT

There is no express and direct conflict of the district court's opinion with State v. Fletcher, 530 So.2d 296 (Fla. 1988) or Collins v. State, 535 So.2d 661 (Fla. 3rd DCA 1988). To the extent that Collins is interpreted as such, this Court has resolved the matter in Downing v. State, 536 So.2d 189 (Fla. 1988).

ARGUMENT

POINT INVOLVED

THERE IS NO EXPRESS AND DIRECT  
CONFLICT WITH THE DISTRICT  
COURT'S OPINION AND OPINION OF  
THIS COURT OR OF ANOTHER  
DISTRICT.

Petitioner attempts to create conflict where none exist. In Collins, supra, the district court held that the stated reason was an inherent component of trafficking. Collins, 535 So.2d at 663. The specific stated reasons were not articulated in the opinion itself. The fact that the reasons were characterized as exhibiting a professional manner does not negate the underlying validity of the reason itself. The Third District has already recognized the validity of professional manner as grounds for departure. McCullum v. State, 498 So.2d 1374, 1376 (Fla. 3rd DCA 1986). The same court in Collins was not receding from that holding but merely attacking the validity of the stated reasons which comprised a finding of professional manner. This is further evidenced by the cases cited in Collins, none of which find professional manner an invalid reason for departure. State v. Cote, 487 So.2d 1039 (Fla. 1986); Chirino v. State, 516 So.2d 97 (Fla. 3d DCA 1987); Alexander v. State, 513 So.2d 1117 (Fla. 2d DCA 1987); 509 So.2d 1320 (Fla. 5th DCA 1987).

In State v. Fletcher, 530 So.2d 296 (Fla. 1988) this court found that calculated planning and premeditation are

inherent in the crime. No where is professional manner discussed or even mentioned. Fletcher, supra. Calculation and premeditation are not synonymous with professional manner. This Court has implicitly found that professional manner could be a valid reason for deposition. Downing v. State, 536 So.2d 189 (Fla. 1988).

*between* To reiterate there is simply no conflict whatsoever ~~with~~ the District Court's opinion with Fletcher or Collins.



CONCLUSION

WHEREFORE, Respondent submits that this Court does not have jurisdiction as Petitioner has failed to establish any express and direct conflict between the decision below and current Florida case laws on the issue.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy hereof has been furnished by United States Mail to Daniel S. Carusi, Esquire, 517 Southwest First Avenue, Ft. Lauderdale, Florida 33301, this 14th day of June, 1989.

  
\_\_\_\_\_  
Of Counsel