

IN THE SUPREME COURT OF FLORIDA

VASTEN E. BLAIR,

Petitioner,

v.

CASE NO. 75,937

STATE OF FLORIDA,

Respondent.

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JURISDICTIONAL BRIEF OF RESPONDENT

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PRELIMINARY STATEMENT

This is an appeal from the decision of the First District Court of Appeal in Blair v. State, 15 F.L.W. D904 (Fla. 1st DCA April 4, 1990).

Petitioner was the appellant in the district court and the defendant in the circuit court, and will be referred to as Petitioner. Respondent was the appellee in the District Court and the prosecutor in the circuit court, and will be referred to as Respondent or the State.

STATEMENT OF THE CASE AND FACTS

Respondent accepts Petitioner's statement of the case and facts.

SUMMARY OF ARGUMENT

Since the argument herein is within the page limitation for summaries of argument, a formal summary of the argument will be omitted.

ARGUMENT

ISSUE

THIS COURT SHOULD DECLINE TO ACCEPT JURISDICTION IN THIS CAUSE DUE TO LACK OF CONFLICT BETWEEN THE DECISION BELOW AND THE CASES CITED BY PETITIONER.

In the instant case, the First District Court of Appeal found that the trial court's reason for imposing a guidelines departure sentence was proper (slip opinion, infra at 2), however, the court reversed Petitioner's sentence pursuant to the mandate of Ree v. State, 14 F.L.W. 565 (Fla. November 16, 1989), because a written reason for departure was not entered until after the sentencing hearing. The appellate court directed the trial court to resentence Petitioner and follow the mandates of Ree v. State, supra. (slip opinion at p.3).

Petitioner contends that the opinion below conflicts with this Court's decisions in Pope v. State, 15 F.L.W. S243 (Fla. April 26, 1990), and Shull v. Dugger, 515 So.2d 748 (Fla. 1987). The State will show that no conflict exists and that Petitioner's reliance on the two cases cited above is misplaced and does not form a basis for this Court to assume "conflict" jurisdiction.

Petitioner first argues that the opinion below in this case conflicts with Shull v. Dugger, supra, and cites the following language from that opinion:

Generally, when all reasons stated by the trial court in support of departure are found invalid, resentencing following remand must be within the presumptive guidelines sentence.

Shull v. Dugger, supra at 749. It is clear that this language refers to the situation where no reasons for departure found by the trial court are valid. In the opinion below in this case, the departure reason was found to be valid (slip opinion, infra at 2,3). Consequently there is no conflict, as the two opinions address different situations.

Petitioner next argues that the opinion below in this case conflicts with Pope v. State, supra, and cites the following language:

...when an appellate court reverses a departure sentence because there were no written reasons, the court must remand for resentencing with no possibility of departure from the guidelines."

Pope v. State, supra at S244. It is clear that this language refers to the situation where no written reasons for departure are given by the trial court. In the instant case, written reasons for departure were issued by the trial court, albeit subsequent to the sentencing hearing (slip opinion, infra at 3). Consequently, there is no conflict, as the two opinions address different situations.

The cases cited by Petitioner are so dissimilar factually with the instant case that they afford this Court no basis for assuming "conflict" jurisdiction. The State




would note that the instant opinion is in harmony with other decisions in the First District. See e.g., Lyles v. State, 15 F.L.W. D894 (Fla. 1st DCA, April 5, 1990), review pending, and Williams v. State, 15 F.L.W. D895 (Fla. 1st DCA April 5, 1990), review pending.

CONCLUSION

Due to the fact that the cases cited by Petitioner seeking to establish conflict jurisdiction in this Court are predicated on a set of factual circumstances not present in the instant case, Respondent respectfully requests that this Honorable Court decline to accept jurisdiction over the cause at bar.

Respectfully submitted,

ROBERT A. BUTTERWORTH  
ATTORNEY GENERAL

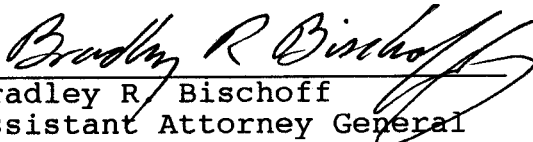
  
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COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Lynn A. Williams, Assistant Public Defender, Leon County Courthouse Fourth Floor, North, 301 South Monroe Street, Tallahassee, Florida 32301, this 25<sup>th</sup> day of May, 1990.

  
Bradley R. Bischoff  
Assistant Attorney General