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IN THE SUPREME COURT OF FLORIDA

JAMES C. OWENS,

Appellant/Petitioner,

vs. CASE NO. 76,516

STATE OF FLORIDA,

Appellee/Respondent.

PETITIONER'S REPLY BRIEF

NANCY A. DANIELS
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

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TABLE OF CONTENTS

TABLE OF CITATIONS

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	:	

REPLY BRIEF OF APPELLANT/PETITIONER

ARGUMENT

ISSUE

THE FLORIDA FIRST DISTRICT COURT OF APPEAL ERRED WHEN IT REMANDED APPELLANT'S SENTENCE WITH THE INSTRUCTIONS THAT THE LOWER COURT COULD STILL DEPART FROM THE GUIDELINES EVEN THOUGH THE DEPARTURE REASON WAS ORALLY ANNOUNCED BUT NOT CONTEMPORANEOUSLY RENDERED IN WRITING.

The State tries to weasel around the very clear and very applicable holding of Robinson v. State, 15 FLW S612 (Fla. 1990), by claiming that as no written reasons were originally issued in that case, it's inapplicable to this case. (Respondent's brief at 5-6; 10).

Two points should be made: 1) The opinion which this Court issued was based on the second (not original) appeal to the lower court, and that appeal involved the issuance of written reasons 7 months after the second sentencing hearing in which the oral reasons were given. 2) The failure to provide written contemporaneous reasons is the same as if no written

reasons were ever provided. Stanford v. State, 16 FLW D251 (Fla. 4th DCA 1991).

Next, the State tries to evade the holding of Ree v. State, 565 So.2d 1329 (Fla. 1990) by arguing that this is not a pipeline case.

As this Court well knows, and as pointed out in the first paragraph of that opinion, this version of Ree was a result of a rehearing petition. The First District Court of Appeal was well aware of the arguments made by the undersigned in respect to Ree because he argued from the very outset that Ree v. State, 14 FLW 565 (Fla. 1989) [The original opinion] required that Appellant be resentenced under the Guidelines. [See, e.g., Appellant's brief in the District Court at 13].[1] This is merely evasive action by the State in its desperate attempt to fog the issue before the Court.

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[1]As this Court is no doubt well aware, the retroactivity of Pope v. State, 561 So.2d 554 (Fla. 1990) has been certified to this Court. See State v. Northcutt, 16 FLW D110 (Fla. 4th DCA 1990) and State v. Green, 16 FLW D98 (Fla. 3rd DCA 1990). Appellant only parenthetically mentions this.

CONCLUSION

Based on the foregoing arguments and authorities in this and Petitioner's brief on the merits, Appellant is entitled to be resentenced within the Guidelines.

Respectfully submitted,

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COUNSEL FOR APPELLANT

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been forwarded by hand delivery to James W. Rogers, Assistant Attorney General, The Capitol, Tallahassee, Florida; and a copy has been mailed to James C. Owens, 815 Bay Avenue, Panama City, Florida 32401 this 18th day of February, 1991.

DAVID P. GAULDIN