

SUPREME COURT OF FLORIDA

FILED

MD J. WHITE

OCT 2 1990

CLERK SUPREME COURT  
BY

FLORIDA RULES OF CRIMINAL PROCEDURE  
re SENTENCING GUIDELINES  
(Rules 3.701 and 3.988)

CASE NO. 76683

PETITION

The SENTENCING GUIDELINES COMMISSION petitions this Court for revisions to the sentencing guidelines to conform the rule to recent statutory enactments and to revise certain portions of the rule to clarify the intent of the Commission and would allege:

1. The 1990 Florida Legislature created new crimes subject to the sentencing guidelines. One of the new crimes will require an amendment to Florida Rules of Criminal Procedure 3.701(c), and the form appearing at Rule 3.988(b), Florida Rules of Criminal Procedure, while another of the new crimes was placed in a chapter of the Florida Statutes currently scored in the offense category for which the Sentencing Guidelines Commission recommends incorporation. The other new crimes are recommended for inclusion in the all other felonies category. No formal change to either Rule 3.701(c) or the forms found at Rule 3.988 is necessary to incorporate three of the four new crimes in the categories indicated.
2. The 1990 legislation subject to the sentencing guidelines is as follows:

Ch. 90-70, §1, Laws of Fla. This bill creates new penalties for psychotherapists who engage in sexual misconduct with a client or former client, an enhanced penalty for second and subsequent offenses and penalties for therapeutic deceptions. The offense is a third degree felony. Second and subsequent offenses are second degree felonies. §491.0112, Fla. Stat. (Supp. 1990).

Rules 3.701(c)  
and 3.988(b),  
Fla.R.Crim.P.  
(category 2)

Ch. 90-111, §6, Laws of Fla. This bill creates new crimes for sale, purchase, manufacture, delivery, or

Rule 3.988(g),  
Fla.R.Crim.P.  
(category 7)

possession with intent to sell, purchase, manufacture, or deliver, a controlled substance in, on, or within 200 feet of the real property comprising a public housing facility, a public or private college, university or other post-secondary educational institution, or any public park. The penalties upon conviction are determined in accordance with the type of controlled substance involved. §893.13, Fla. Stat. (Supp. 1990).

Ch. 90-301, Laws of Fla. This bill creates the offenses of commercial bribery and receiving a commercial bribe. A person commits the crime of commercial bribe receiving if the person solicits, accepts, or agrees to accept a benefit with intent to violate a statutory or common law duty as listed in s. 838.15(1). Commercial bribery is committed where a person, knowing that another is subject to a duty described in s. 383.15(1) and with intent to influence the other person to violate that duty, confers, offers to confer, or agrees to confer a benefit on the other. Both offenses are third degree felonies. §838.15, Fla. Stat. (Supp. 1990).

Rule 3.988(i),  
Fla.R.Crim.P.  
(category 9)

Ch. 90-306, §63, Laws of Fla. This bill makes it unlawful for any person to knowingly sell, rent, loan, give away, distribute, transmit, or show any obscene material to a minor. The new offense is a third degree felony. §847.0133, Fla. Stat. (Supp. 1990).

Rule 3.988(i),  
Fla.R.Crim.P.  
(category 9)

3. Legislation that should be incorporated into the guidelines by the Sentencing Guidelines Commission is provided for the review and approval of the Court as required by section 921.001(4)(b), Florida Statutes (1989). The Florida Legislature has given the Court the ability to revise the statewide sentencing guidelines, without legislative approval, where the Court certifies that the revisions are necessary to conform the guidelines to previously adopted statutory revisions. The preceding amendments are purely procedural and are intended to incorporate legislative

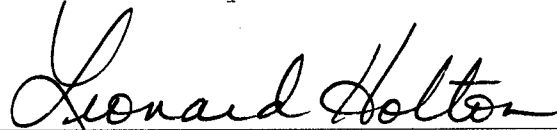
changes regarding crimes subject to the sentencing guidelines.

4. In addition to the revisions concerning recent legislative enactments, the Sentencing Guidelines Commission recommends two revisions to clarify the intent of the Commission in scoring victim injury and legal status.
5. A 1987 revision to Rule 3.701(d)(7), Florida Rules of Criminal Procedure, was made to expand the definition of victim injury. In revising the rule and the committee note, language that had been added to the committee note the previous year was omitted. The omitted language stated the intent of the Commission to score victim injury points for each count at conviction regardless of the number of victims.
6. As a result of that omission, recent case law has held that where multiple offenses are committed against a single victim, a cumulative injury should be considered and a single score assigned. This type of scoring provides the potential for disparity in the scoring of victim injury by resulting in a lower assessment where multiple offenses are committed against a single victim than would be scored for those same crimes if committed against multiple victims.
7. The consideration of cumulative injury to determine the level of victim injury points to be assessed also provides a potential for confusion. The current structuring of levels of victim injury will not readily adapt to a consideration of cumulative injury. The Commission recommends that the committee note to Rule 3.701(d)(7), Florida Rules of Criminal Procedure, be amended to clarify the manner in which victim injury is to be scored. Proposed language for a revision is attached.
8. Recent case law has held that legal status points are not limited to a single assessment and can properly be assessed for each offense committed while the defendant was under legal constraint, regardless of the number of offenses at conviction. The scoring of multiple assessments of legal status points was never intended under the sentencing guidelines and disrupts the structure by which sentencing criteria are weighed. It is possible for legal status, when scored in multiple assessments, to routinely exceed the weight assigned to the offenses at conviction and prior record, contrary to the intent of the Commission.
9. The application of the weighing process utilized under the sentencing guidelines is enhanced by the fact that

all criteria scored in the calculation of a recommended sentence, with the notable exception of legal status, have structured levels. This structuring establishes the relative importance of a particular criteria, allows for the means to regulate the impact of a particular criteria on a recommended sentence and also reflects a recognition that varying levels of points could be assessed.

10. By scoring multiple assessments of legal status points an alteration of the probability of incarceration not intended by the Commission could result. Legal status is a situational criteria that is to be applied only once and was not intended to be a function of the number of offenses committed while under legal constraint. A proposed committee note to clarify the Commission's intent is attached.

WHEREFORE the SENTENCING GUIDELINES COMMISSION petitions the Court to make the revisions to the rule as requested.



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Certificate of Service

I certify that a copy of this Petition has been provided by regular United States mail to The Florida Bar, Tallahassee, FL 32301-8226, and to the Office of the Attorney General, The Capitol, Tallahassee, FL, 32301, this 2nd day of October, 1990.



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Committee Note to  
Fla.R.Crim.P. 3.701(d)(6)

Old Rule

New Rule

Comments

Legal status points are to be assessed where forms of legal constraint existed at the time of the commission of offenses scored as primary or additional offenses at conviction.  
Legal status points are to be assessed only once whether there are one or more offenses at conviction.

The purpose of this revision is to clarify the original intent that legal constraint is a status consideration and is not to be considered a function of the number of offenses at conviction.

Committee Note to

Fla.R.Crim.P. 3.701(d)(7)

Old Rule	New Rule	Comments
<p>(d)(7) This provision implements the intention of the commission that points for victim injury be added for each victim injured during a criminal episode or transaction. The injury need not be an element of the crime for which the defendant is convicted, but is limited to physical trauma. However, if the victim injury is the result of a crime for which the defendant has been acquitted, it shall not be scored.</p>	<p>(d)(7) This provision implements the intention of the commission that points for victim injury be added for each victim injured during a criminal episode or transaction <u>and for each count whether there are one or more victims</u>. The injury need not be an element of the crime for which the defendant is convicted, but is limited to physical trauma. However, if the victim injury is the result of a crime for which the defendant has been acquitted, it shall not be scored.</p>	<p>The purpose of this amendment is to provide consistency in the scoring of victim injury by scoring for each offense at conviction for which victim injury can appropriately be scored whether committed against a single victim or multiple victims.</p>