

IN THE SUPREME COURT OF FLORIDA

047  
**FILED**  
SID J. WHITE  
JAN 18 1991  
CLERK, SUPREME COURT  
By [Signature]  
Deputy Clerk

MARSHALL SANDERS CROCKER,  
Petitioner,

versus

CASE NO. 76,936

STATE OF FLORIDA,  
Respondent.

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PETITIONER'S REPLY BRIEF ON THE MERITS

JAMES B. GIBSON, PUBLIC DEFENDER  
SEVENTH JUDICIAL CIRCUIT

PAOLO ANNINO  
Florida Bar Number 0379166  
and  
BRYNN NEWTON  
Florida Bar Number 175150  
ASSISTANT PUBLIC DEFENDERS  
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ATTORNEYS FOR PETITIONER

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SUMMARY OF THE ARGUMENT

In Petitioner's initial brief, Petitioner argued that Section 39.12(7)(e), Florida Statutes (1987), "impliedly repealed" Rule 3.701(d)(5)(c), Florida Rules of Criminal Procedure, because this specific provision of the Florida Juvenile Justice Act was adopted after Rule 3.701(d)(5)(c). The State's answer brief fails to respond to the legal significance of Section 39.12(7)(e), Florida Statutes.

POINT I

WHETHER SECTION 39.12(7)(e), FLORIDA STATUTES  
(1987), "IMPLIEDLY REPEALED" RULE 3.701(d)(5)(c),  
FLORIDA RULES OF CRIMINAL PROCEDURE.

The State's Answer Brief never addressed the specific issue raised by Petitioner, i.e. whether Section 39.12(7)(e), Florida Statutes (1987), "impliedly repealed" Rule 3.701(d)(5)(c), Florida Rules of Criminal Procedure. Section 39.12(7)(e) was enacted in 1987, and it lists exhaustively all the different proceedings which are exempt from the general prohibition of using juvenile records in non-juvenile proceedings. See Section 39.12(7), Florida Statutes (1987). Section 39.12(7)(e) does not cite the sentencing guidelines has an exemption. Petitioner has argued that Section 39.12(7)(e) "impliedly repealed" Rule 3.701(d)(5)(c) because this specific provision of the Florida Juvenile Justice Act was adopted after Rule 3.701(d)(5)(c). The State never cites or even responds to the legal significance of Section 39.12(7)(e), Florida Statutes.

The State tries to circumvent the general prohibition of using juvenile records in non-juvenile proceedings by arguing that "... information available to the trial courts at sentencing need not be admissible in evidence." (Respondent's Brief, at 10). The State appears to argue that the Florida Juvenile Justice Act prohibits only the use of admissible evidence of juvenile records in other proceedings. But the State argues that a trial court may rely on inadmissible evidence (e.g. Presentence Investigation Reports) to depart from the sentencing guidelines.

The State's reading of the Florida Juvenile Justice Act is hyper-technical and leads to absurd consequences. For example, if the State's reading were correct, then a trial court would be prohibited from considering admissible evidence of a defendant's juvenile record, but the trial court would be allowed to rely on inadmissible evidence of a defendant's juvenile record in order to depart from the sentencing guidelines.

The State's argument ignores the purpose of the general prohibition of using a juvenile record in a non-juvenile proceedings. The purpose is to promote rehabilitation of the juvenile by promising the child that if he or she fulfills the requirements of the Florida Juvenile Justice Act, his or her youthful indiscretions will not be an albatross around the child's neck the rest of his or her life. The Florida Juvenile Justice Act should be read in light of its rehabilitative purpose to prohibit a trial court in the context of the Sentencing Guidelines to use any evidence of a juvenile record for purposes of a departure sentence.

CONCLUSION

For the reasons expressed in Point I herein and in Petitioner's initial brief on the merits, Petitioner respectfully urges that this Honorable Court recede from its decision in Weems v. State, 469 So.2d 128 (Fla. 1985), and declare that an unscored juvenile record of adjudications of delinquency is not a permissible basis upon which to depart from the sentencing guidelines, and vacate Petitioner's sentences with directions to the trial court to resentence him within the sentencing guidelines. In the alternative, and for the reasons expressed in Points I, III, and IV in Petitioner's initial brief on the merits, Petitioner respectfully requests that this Honorable Court vacate his sentence for burglary of a dwelling and remand this cause to the trial court with directions that he be resentenced within the sentencing guidelines.

Respectfully submitted,

JAMES B. GIBSON, PUBLIC DEFENDER  
SEVENTH JUDICIAL CIRCUIT



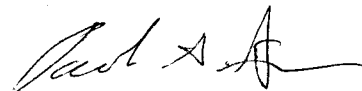
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to the Honorable Robert A. Butterworth, Attorney General, 210 North Palmetto Avenue, Suite 447, Daytona Beach, Florida 32114, by delivery to his basket at the Fifth District Court of Appeal; and by mail to Mr. Marshall S. Crocker, Route 2 Box 463, Interlachen, Florida 32148, this 15th day of January, 1991.

A handwritten signature in cursive script, appearing to read "Paul A. A.", with a long horizontal flourish extending to the right.

ATTORNEY