047

IN THE SUPREME COURT OF THE STATE OF FLORIDA

EUGENE N. BUCHANAN,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

CASE NO. 78,153

APPEAL FROM THE CIRCUIT COURT
IN AND FOR ORANGE COUNTY, FLORIDA

PETITIONER'S REPLY BRIEF ON THE MERITS

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

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ARGUMENT

IS A TRIAL COURT REQUIRED TO GIVE CONTEMPORANEOUS WRITTEN REASONS IN DEPARTING DOWNWARD FROM THE GUIDELINES SINCE FLORIDA RULE OF CRIMINAL PROCEDURE 3.800(b) ALLOWS A COURT IN SOME CRIMINAL CASES UPON RECEIPT OF A TIMELY MOTION TO REDUCE OR MODIFY A SENTENCE WITHOUT EXPRESSLY REQUIRING THE COURT TO GIVE CONTEMPORANEOUS WRITTEN REASONS?

Petitioner does not dispute the authorities cited by Respondent, insofar as those authorities recite the present state of the law regarding the requirement of contemporaneous written reasons for any departure sentence. However, a simple recitation of those authorities and the general rule they dictate, is in Appellant's view, an inadequate response to the issue now before this Court; the issue framed by the Fifth District Court in its certification of a question and conflict.

The so-called "end run" around the requirement for written departure reasons that the State now complains of, and that the Fourth District Court disapproved in State v. Allen, 553 So.2d 176 (Fla. 4th DCA 1989), was found by the Fifth District Court to be technically contrary to existing law. However, the Fifth District Court, in its Order certifying apparent conflict with State v. Whiddon, 554 So.2d 651 (Fla. 1st DCA 1989), began by noting that "the question posed [whether written reasons for a downward departure are unnecessary in light of the trial court's discretion to mitigate under 3.800(b)], is an interesting one." (Emphasis added). Petitioner respectfully submits that the Fifth District Court perceived the inherent futility in strict

adherence to the guidelines requirement for contemporaneous written departure reasons, in a situation where the trial court has orally announced valid reasons, and has clearly expressed its intention to depart downward, while at the same time choosing to mitigate under Rule 3.800(b), which requires no statement of reasons whatsoever. Nowhere is the incongruous nature of strict requirement for adherence to the guidelines so apparent as in Allen, supra. The trial court there invited the prosecution to seek appellate review, because of the conflict between the unfettered discretion to mitigate under 3.800(b), and the guidelines requirement for contemporaneous written reasons.

Petitioner suggests that the question before this Court was termed "an interesting one" by the Fifth District Court, because they, like the trial judge in Allen, recognized that trial judges cannot, and were not meant to be inhuman enforcers of inanimate laws. There are times when the imposition of a just and proper sentence requires more than a "rubber-stamp" approach. Rule of Criminal Procedure 3.800(b) gives trial judges the authority to employ insight and reason in the imposition of sentence. Petitioner now argues for a good faith extension of the existing law, in order to preserve the discretion that is essential for judges at the time of sentencing; to preserve the privilege of every defendant who finds himself thrust into the crucible of litigation, to benefit from the wisdom and deliberation of the trial court at the moment when the State exacts its toll.

The Respondent has not disputed that in the event Petitioner is remanded to the trial court for imposition of a guidelines sentence, pursuant to Rule 3.800(b), upon the trial court's invitation and a timely motion, that guidelines sentence could be mitigated. Allen, supra, 553 So.2d at 177. Mandatory, robotic compliance with legal punctilios, in order to achieve a result that is the product of the trial judge's careful consideration, and is thus inevitable, seems inefficient and unnecessary. This Court, by its ruling in this case, can provide trial judges the opportunity to employ such consideration in the process and performance of one of their most difficult and important functions; the imposition of sentence.

Petitioner suggest that no compelling purpose is served by requiring a trial judge to "go through the motions" and impose a guidelines sentence with contemporaneous written reasons; when, as was Judge Franza in the Allen case, the trial court is expressly inclined to mitigate, even if for no other reason than the judge's belief that the defendant will benefit from the court's extension of some measure of forbearance. Petitioner submits that what has been called an "end-run", is in fact an example of the inherent integrity of the judicial system. It has been said that what we ask of trial courts is in fact an impossibility; i.e., to sit in neutral and detached judgment upon a fellow human being. While the Sentencing Guidelines were designed to promote uniformity, Rule 3.800(b) makes it evident that the guidelines were not intended to usurp the discretion of

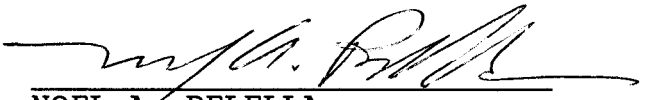
the trial court in the performance of that awesome task.

CONCLUSION

BASED UPON the foregoing arguments and the authorities cited therein, Petitioner respectfully requests that the question certified by the Fifth District Court be answered in the negative.

Respectfully submitted,

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT



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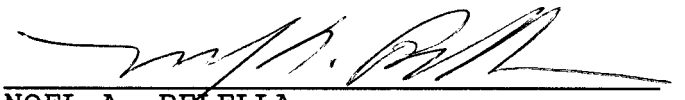
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been hand delivered to: The Honorable Robert A. Butterworth, Attorney General, 210 N. Palmetto Ave., Suite 447, Daytona Beach, FL 32114 via his basket at the Fifth District Court of Appeal and mailed to: Mr. Eugene Buchanan, (Genesis Program), P.O. Box 4970, Orlando, FL 32802, this 3rd day of September, 1991.



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