

FILED

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JUN 28 1991

CLERK, SUPREME COURT

By 
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

LEVI RAHMING,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

Case No. 78164

PETITIONER'S BRIEF ON JURISDICTION

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PRELIMINARY STATEMENT

Petitioner was the defendant in the Criminal Division of the Circuit Court of the Nineteenth Judicial Circuit, in and for St. Lucie County, Florida, and the appellant in the Fourth District Court of Appeal. Respondent was the prosecution and the appellee below.

In the brief, the parties will be referred to as they appear before this Honorable Court.

The following symbol will be used:

R = Record on Appeal

STATEMENT OF THE CASE AND FACTS

Petitioner was convicted of attempted second degree murder with a firearm, aggravated battery with a firearm, and two counts of attempted robbery with a firearm and mask (R 686, 776-777). In computing his sentencing guidelines score, the trial court assessed legal constraint points for each offense for which Petitioner was being sentenced and for which he had been under legal constraint at the time it was committed. Thus, the legal constraint points provided for the in the guidelines scoresheet were multiplied by the number of new offenses Petitioner committed.

On appeal, the Fourth District Court of Appeal upheld this multiplication of legal constraint points, citing Carter v. State, 571 So.2d 520, 522 (Fla. 4th DCA 1991) review granted, Case No. 77,434 June 5, 1991. Rahming v. State, Case No. 90-1704 (June 5, 1991). (Appendix I). Carter v. State aligns with Walker v. State, 546 So.2d 764 (Fla. 5th DCA 1989) which conflicts with another decision from the Second District Court of Appeal

SUMMARY OF ARGUMENT

The decision of the district court in Rahming v. State was a per curiam opinion which cited as controlling authority a decision, Carter v. State, that has been granted review before this Court in Case No. 77,434. Carter v. State, (Fla. 4th DCA December 3, 1990) (appendix 2-4). The Carter decision relies on Walker v. State, 546 So.2d 764 (Fla. 5th DCA 1989) which expressly and directly conflicts with other decision from the Second District Court of Appeal. Consequently, this Court has jurisdiction to review the decision in Petitioner's case under Article V, Section 3(b)(3) of the Florida Constitution.

ARGUMENT

THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL EXPRESSLY AND DIRECTLY CONFLICTS WITH DECISIONS OF THE SECOND DISTRICT COURT OF APPEAL ON WHETHER, IN COMPUTING A GUIDELINES SENTENCE, LEGAL CONSTRAINT POINTS MAY BE MULTIPLIED FOR EACH OFFENSE COMMITTED WHILE THE DEFENDANT WAS ON CONSTRAINT.

In Scott v. State, 16 F.L.W. 356 (Fla. 2d DCA February 1, 1991) and Lewis v. State, 16 F.L.W. 352 (Fla. 2d DCA February 1, 1991), the Second District Court of Appeal has held that, when computing a defendant's sentencing guidelines score, the points assessed for legal constraint may not be multiplied by the number of offenses committed by the defendant while he was on legal constraint. The appellate court based its decision on the absence of express authorization either in the sentencing guidelines statutes or rules for such a result, as well as the lack of apparent legislative intent that legal constraint points should be multiplied.

The decisions of the Second District Court of Appeal are, on this issue, directly and expressly in conflict with the decision of the Fourth District Court of Appeal in the present case as well as in Carter v. State (Appendix 2-4), which has been granted before this Court (Case No. 77,434). Below, the Fourth District Court of Appeal followed the Fifth District Court of Appeal in its decisions in Walker v. State, 546 So.2d 764 (Fla. 5th DCA 1989) and Gissinger v. State, 481 So.2d 1269 (Fla. 5th DCA 1986). Those cases held that legal constraint points could properly be multiplied, despite the absence of an express legislative authorization for doing so. By following them, the Fourth District Court of Appeal is not in

direct and express conflict with the Second District Court of Appeal's decisions in Lewis v. State, supra, and Scott v. State, supra.

Article V, Section 3(b)(3) of the Florida Constitution gives this Court jurisdiction to review a decision of a district court of appeal which is in express and direct conflict with the decision of another district court of appeal on the same point of law. The instant case clearly falls within this definition. Moreover, the instant case presents an issue which this Court should resolve. The multiplication of legal constraint points can have an enormous impact on a defendant's guidelines sentence, out of all proportion to either the nature of the new crimes committed or any of the other factors which are considered in arriving at a sentencing guidelines score. In Scott v. State, supra, for instance, the appellate court pointed out that "in order to obtain the same number of points without the legal status multiplier, the state would have had to present 411 first-degree felony convictions as additional offenses at conviction, or 41 such felonies as primary offenses in this case." More than half the points assessed against that defendant in that case were the result of the multiplication of his legal constraint score. Certainly, this is an issue which has great impact on the sentences of those individuals unfortunate enough to be affected by it. And the number of those individuals is far from infinitesimal. The scoring of multiple legal constraint points is raised as an issue in at least nine appeals presently pending before the Fourth District Court of Appeal and assigned to attorneys in the office of undersigned counsel.

Finally, already pending before this Court is Flowers v. State, 567 So.2d 1055 (Fla. 5th DCA 1990), Case No. 76,854, where the Fifth District Court of Appeal itself certified the question herein presented as constituting an issue of great public importance. Thus, the per curiam opinion in the instant case cited as controlling authority Carter v. State, which decision has been granted review by this Court (Case No. 77,434). This Court has jurisdiction to review the decision in Petitioner's case. Jollie v. State, 405 So.2d 418 (Fla. 1981); State v. Brown, 475 So.2d 1 (Fla. 1985). Accordingly, Petitioner requests this Court to accept jurisdiction pending review of the decision in Carter v. State, supra.

CONCLUSION

Based on the foregoing arguments and the authorities cited therein, Mr. Rahming respectfully requests this Court to accept jurisdiction in his case.

Respectfully Submitted,

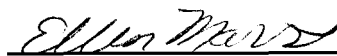
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished by courier to Douglas J. Glaid, Assistant Attorney General, Elisha Newton Dimick Building, Room 240, 111 Georgia Avenue, West Palm Beach, Florida 33401 this 26th day of June, 1991.



Counsel for Petitioner