

IN THE SUPREME COURT OF FLORIDA

RHONDA McCOY, :  
PETITIONER, :  
vs. : Case No. 78,316  
STATE OF FLORIDA, :  
RESPONDENT. :  
\_\_\_\_\_ :

PETITIONER'S REPLY BRIEF

JAMES MARION MOORMAN  
PUBLIC DEFENDER  
TENTH JUDICIAL CIRCUIT

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IN THE SUPREME COURT  
STATE OF FLORIDA

RHONDA McCOY, :  
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           Petitioner, :  
 :  
 vs. :           Case No. 78,316<sup>1</sup>  
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 STATE OF FLORIDA, :  
 :  
           Respondent. :  
 :  
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APPLICATION FOR CONSTITUTIONAL CERTIORARI TO  
THE DISTRICT COURT OF APPEAL, SECOND DISTRICT

PETITIONER'S REPLY BRIEF

Respondent's merit-brief argues a moot point: Petitioner does not and has never contested that a judge may set aside at any time a sentence produced by fraud or deceit.

The certified question raises two other issues: first, whether there was evidence of fraud or deceit by Petitioner, and second whether, because the potential for misunderstanding in negotiated pleas is *always* so inherent, trial judges must follow certain "routine steps" so that such misunderstandings or miscommunications don't occur in the first instance.

This Honorable Court has answered the second question in the affirmative: judges and prosecutors *must* follow such certain simple steps as making sure the precise terms of the negotiated plea are proffered on the record, and making sure no sentence is

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<sup>1</sup> Appeal Number 90 - 1553 in the District Court of Appeal, Second District.

imposed until *after* substantial assistance is rendered.

Neither of these steps were taken: if the prosecutor had followed the law this case would not be on appeal. Since the prosecutor didn't follow the law, he cannot decide after the fact, as he did, that the Petitioner did not honor the terms of the plea bargain: no precise terms were shown, and sentencing occurred prior to the co-defendant's trial. On this record a failure to comply can neither be proven nor *disproven*.

Since the prosecutor failed to follow the law, this Honorable Court has no basis to address the tenuous question of whether Petitioner failed to honor the terms of her plea bargain: this Honorable Court has no guidelines whatsoever.

In sum, the prosecution failed to follow the law, punished Petitioner for its own failures, and has presented a record by which Petitioner cannot defend herself: she cannot prove she honored the terms of the plea bargain because there is no *record* of any such terms. Again, had the prosecution simply deferred sentencing until after the co-defendant's trial as required by law, the miscommunication would never have occurred. In all other respects the Petitioner will rely on the arguments and authorities presented in her initial brief on the merits.

Because the prosecutor failed to follow common-sense procedures required by law, the lower court could not legally impose a greater sentence. This Honorable Court should remand with directions to reinstate the original sentence.

CONCLUSION

In light of the reasons, arguments and authorities presented in this brief, the Petitioner respectfully requests that this Honorable Court accept jurisdiction, answer the certified question in the negative, and thereafter reverse and remand the judgment and sentence of the trial court.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail to Dell H. Edwards, Assistant Attorney General, Seventh Floor, Westwood Center, 2002 North Lois Avenue, Tampa, Florida 33690, and to Rhonda McCoy, this 12th day of September, 1991.



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