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STATEMENT OF THE CASE AND OF THE FACTS

This cause is before this Court for a consideration of the merits (it having postponed its decision on jurisdiction) of whether ----- based upon this Court's holding in Pope v. State, 561 So.2d 554 (Fla. 1990) ----- the ruling of the District Court of Appeal of Florida, Third District, remanding the cause back to the trial court for a resentencing within the Sentencing Guidelines should be affirmed, the said district court having certified this cause to this Court as being a matter of great public importance (as it also did in Fonseca v. State, 570 So.2d 424 [Fla. 3d DCA 1990] and Perez v. State, 566 So.2d 881 [Fla. 3d DCA 1990]).

The underlying facts are as is set forth in the said district court's opinion, to-wit: "Defendant....(received)....his sentence of two consecutive fifteen year terms of cocaine trafficking and related convictions. The Defendant's guidelines sentence scored out to a minimum mandatory term of fifteen years or to a guidelines sentence of twelve to seventeen years. The trial judge sentenced Defendant to a total of thirty years, starting at the bottom of the guidelines score sheet that written reasons would be submitted by separate order. However, no written reasons were ever entered."

POINT ON THE MERITS

WHETHER, AS IN THIS COURT'S HOLDING IN POPE v. STATE, (561 SO. 2d 554 [FLA.1990]), THIS COURT SHOULD HOLD IN THIS CAUSE THAT THE RESENTENCING OF A CRIMINAL DEFENDANT, WHO WAS SENTENCED OUTSIDE THE PERMITTED SENTENCING GUIDELINES RANGE WITHOUT WRITTEN REASONS HAVING BEEN GIVEN THEREFOR, SHOULD BE LIMITED TO A SENTENCE WITHIN THE GUIDELINES.

SUMMARY OF THE ARGUMENT

This Court should affirm the ruling of the District Court of Appeal of Florida, Third District, reversing the actions of the sentencing court in sentencing the Defendant outside the permitted Sentencing Guidelines range and remanding the cause back to the sentencing court for a resentencing limited to being within the Sentencing Guidelines because this case involves the same situation that existed when this Court entered its ruling in Pope v. State, 561 So.2d 554 (Fla.1990), which was relied upon by the said district court below and which held that where the sentencing court sentences outside the permitted sentencing guidelines range, written reasons therefor must be given, or the Defendant must be resentenced within the guidelines.

Further, the same policy reason underpinning this Court's holding in the Pope case, to-wit: to provide a more meaningful and expeditious appellate review, applies to the situation in the instant cause.

ARGUMENT

AS IN THIS COURT'S HOLDING IN POPE v. STATE, (561 SO. 2d 554 [FLA.1990]), THIS COURT SHOULD HOLD IN THIS CAUSE THAT THE RESENTENCING OF A CRIMINAL DEFENDANT, WHO WAS SENTENCED OUTSIDE THE PERMITTED SENTENCING GUIDELINES RANGE WITHOUT WRITTEN REASONS HAVING BEEN GIVEN THEREFOR, SHOULD BE LIMITED TO A SENTENCE WITHIN THE GUIDELINES.

The only pertinent difference between the situation that pertained in Pope v. State, 561 So.2d 554 (Fla.1990), when it came before this Court, and the situation that pertains in the instant cause as it comes before this Court, is that when the former case came before it, this Court had not yet handed down its ruling in that case.

It seems almost ludicrous to state such an obvious fact, i.e., that when a case comes before the Court, the Court has not as yet ruled in that case, but this fact is central to this Defendant's argument herein as to why this Court should apply and/or interpret the applicable statutory and procedural rule law the same as it did in Pope.

The sentencing date in this cause was May 2, 1988. The sentencing date in Pope was sometime before April 20, 1989, which was the date the District Court of Appeal of Florida, Fifth District, handed down its decision in the Pope case (which appears at 542 So.2d 423 [Fla. 5th DCA 1989]).

As of the date of this Court's holding in Pope, which was April 26, 1990, with Rehearing being denied on June 27, 1990, Rule 3.701(11), Fla. R. Crim. Proc. provided, in pertinent part:

"Any sentence outside the permitted guidelines range must be accompanied by a written statement delineating the

reasons for the departure."

The above-quoted portion of Subsection 11 of that rule still reads precisely the same as it did when this Court ruled in Pope but, more importantly to this cause, this said portion of the involved statutory subsection has read exactly the same since April 21, 1988, when this Court approved changes in the Florida Rules of Criminal Procedure (which changes appear at 552 So.2d 374), which changes included adding the words "permitted" and "range" to the said involved portion of subsection 11 to Rule 3.701.

It should be added that these two word additions are not pertinent to the issue involved herein because the sentence that was meted out by the trial court was more than a one cell upward departure.

Further, Sect. 921.001(6), Florida Statutes, the portion of the "Sentencing Commission" statute applicable to the issue involved herein, has read exactly the same as it currently reads since that statute was revised in 1983 (it was enacted in 1982). See Historical note to Sect. 921.001, Florida Statutes, at 23 F.S.A. 491.

The said Sect. 921.002(6), reads as follows:

"(6) The sentencing guidelines shall provide that any sentence imposed outside the range recommended by the guidelines shall be explained in writing by the trial court."

Based upon the foregoing background situations in both the instant cause and in Pope, supra, this Defendant urges upon the Court that because the considerations are the same in both cases,

the result reached should be the same and that therefore this Court should enter its order providing that the holding of the District Court of Appeal of Florida, Third District, in the instant cause should be affirmed and based thereupon the cause should be remanded back for the sentencing court to resentence the Defendant within Sentencing Guidelines.

Finally, the policy reasons requiring a resentencing within the guidelines ----- as versus a remand to allow the court to enter its reasons for the entering of the appealed from sentence ----- relied upon by this Court in Pope, to-wit: to promote a more meaningful and expeditious appellate review are also clearly applicable in this cause.

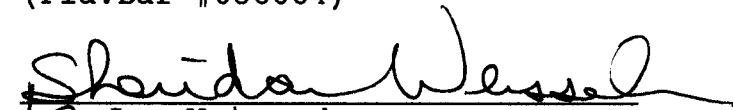
CONCLUSION

For the foregoing reasons, the Defendant, Manuel Parrado, prays the Court to enter its order providing that the ruling of the district court below remanding this cause back to the sentencing court for a resentencing within the Sentencing Guidelines be approved.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy hereof was mailed this 19th day of September, 1991, to KATHERINE B. JOHNSON, ESQ., Assistant Attorney General, State of Florida, 401 N.W. 2nd Avenue (Suite N921), Miami, Florida 33128.

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