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IN THE SUPREME COURT OF FLORIDA

CASE NO. 78, ⁴³⁶346

MANUEL PARRADO,
Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

ON PETITION FOR DISCRETIONARY REVIEW

BRIEF OF RESPONDENT ON MERITS

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INTRODUCTION

In this brief, the Petitioner MANUEL PARRADO will be referred to as the Defendant or the Petitioner. The Respondent THE STATE OF FLORIDA will be referred to as the State or the Respondent.

The symbol "R" will refer to the record on appeal. The symbol "A" will refer to the appendix filed with the Petitioner's brief.

STATEMENT OF THE CASE AND FACTS

On October 1, 1986 the Defendant was indicted for one count of criminal conspiracy to traffic in cannabis, four counts of criminal conspiracy to traffic in cocaine, and one count of violating the Florida Racketeering Influenced and Corrupt Organization Act. These offenses occurred between July 1, 1985 and September 30, 1985. (R. 13-23).

On July 21, 1987, the Defendant pled guilty to all the charges. The State stipulated that it would request a reduction of the Defendant's sentence if the Defendant provided substantial assistance to the State. The trial court adjudicated the Defendant guilty and withheld sentencing until January 11, 1988. (R. 41). The Defendant was released on bond pending sentencing.

On December 8, 1987, the Defendant's bond was revoked after he failed to provide substantial assistance to the State. The court ordered that the Defendant be taken into custody for sentencing.

On May 2, 1988, the trial court sentenced the Defendant to thirty years imprisonment for the one count of criminal conspiracy to traffic in cannabis, the R.I.C.O violation, and two of the four counts of criminal conspiracy to traffic in cocaine. The Defendant was additionally sentenced to thirty years for each of the two remaining counts of criminal conspiracy to traffic in

cocaine. These two thirty year sentences were to be served concurrently with the first thirty year sentence imposed. The sentences for each of these two counts included a fifteen year minimum mandatory sentence which was to be served consecutively to each other. The Defendant's guideline sentence was twelve to seventeen years imprisonment. The trial court noted at the bottom of the Defendant's guideline scoresheet that written reasons for the departure sentence would be submitted by a separate order. (R. 59). However, no written reasons for the departure sentence were ever entered.

The Defendant appealed the departure sentence. The Third District Court of Appeals vacated the sentence and remanded the case for sentencing within the guidelines, citing Pope v. State, 561 So.2d 554 (Fla. 1990). (A. 1-2). Inasmuch as the sentencing hearing in the instant case occurred on May 2, 1988 and Pope v. State was decided on April 26, 1990, the Third District Court of Appeals certified the question of whether Pope should be applied retroactively. The Third District Court of appeals noted that it had already certified this question in the cases of Fonseca v. State, 570 So.2d 424 (Fla. 3d DCA 1990) and Perez v. State, 566 So.2d 881 (Fla. 3d DCA 1990). The Third District Court of Appeals stayed the mandate pending this Court's answer of the certified question. (A. 2).

This Petition for Discretionary Review ensued.

QUESTION PRESENTED

WHETHER POPE v. STATE SHOULD BE
APPLIED RETROACTIVELY TO SENTENCES
IMPOSED PRIOR TO APRIL 26, 1990?

SUMMARY OF THE ARGUMENT

Pope should not be applied retroactively to sentences imposed prior to April 26, 1990.

ARGUMENT

POPE v. STATE SHOULD NOT BE APPLIED
RETROACTIVELY TO SENTENCES IMPOSED
PRIOR TO APRIL 26, 1990.

It is the State's position that there is no discernible difference between Ree v. State, 565 So.2d 1329 (Fla. 1990) and Pope v. State, 561 So.2d 554 (Fla. 1990). Therefore, the certified question should be answered in the negative and Pope v. State should be applied prospectively only.

CONCLUSION

Wherefore, based on the foregoing reasons and authorities cited herein, the Respondent THE STATE OF FLORIDA respectfully requests that this Court respond to the certified question in the negative.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing BRIEF was furnished by mail to LEE WEISSENBORN, Attorney for Petitioner, OLDHOUSE, 235 N.E. 26th Street Miami, Florida 33137 on this 10th day of October, 1991.

Katherine B. Johnson

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/gdp