IN THE SUPREME COURT OF FLORIDA

WILLIAM FENELL PITTMAN,	:	
Petitioner,	:	
vs.	:	Case No. 79,690
STATE OF FLORIDA,	:	
Respondent.	:	
	:	

DISCRETIONARY REVIEW OF DECISION OF THE
DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

INITIAL BRIEF OF PETITIONER ON THE MERITS

JAMES MARION MOORMAN
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

KEVIN BRIGGS
ASSISTANT PUBLIC DEFENDER
FLORIDA BAR NUMBER 520357

Public Defender's Office
Polk County Courthouse
P. O. Box 9000--Drawer PD
Bartow, FL 33830
(813) 534-4200

ATTORNEYS FOR PETITIONER

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STATEMENT OF THE CASE AND FACTS

In the Circuit Court for Polk County, the state filed an information charging Appellant, WILLIAM FENELL PITTMAN, with armed robbery. [R1-3] Appellant was a juvenile. [R18] This offense occurred on June 29, 1990. [R2] Pursuant to the following plea negotiations, Appellant plead no contest to the charged offense on January 15, 1991 [R6,12]:

> Mr. Solorzano [defense counsel]: The negotiations would call for--it would be for Mr. Pittman to plea as charged to one count of armed robbery. There would be no minimum mandatory.
>
> Mr. Kirkland [prosecutor]: He did not have a firearm, Your Honor.
>
> Mr. Solorzano: This would be youthful offender sanctions and the State prison. There would be a cap of four years on any period of State prison. The State is also not going to object to any recommendation for boot camp for Mr. Pittman.

On February 28, 1991, Appellant appeared for sentencing before the Honorable Randall G. McDonald, circuit court judge. [R15] Defense counsel noted the trial court's option of sentencing Appellant as a juvenile [R16]:

> We would note that the predisposition report recommends juvenile sanctions in Mr. Pittman's case, although in light of that we would request that the Court consider imposing Mr. Pittman on a period of Community Control.
>
> Otherwise, you know, if the Court finds that adult sanctions are appropriate that the Court follow the plea agreement.

Following this comment, the prosecutor argued that Appellant's prior record foreclosed the imposition of juvenile sanctions. [R16-

17] Judge McDonald concluded, "Based on his record and my review of his PDR, also, I'm going to find that adult sanctions are appropriate in this case, so I guess I'll have to do an order on that, if you'll please remind me to do that." [R17] Judge McDonald also noted that a negotiated plea had been entered. [R17]

The trial court adjudicated Appellant guilty and sentenced him to four-years imprisonment followed by two years of probation, pursuant to the Youthful Offender Act. [R18-19,22-25] A sentencing guidelines scoresheet was filed. [R26] Appellant filed a timely notice of appeal. [R30] On March 25, 1992, the Second District Court of Appeal affirmed the lower court's judgment and sentence. Pittman v. State, 595 So.2d 1101 (Fla. 2d DCA 1992). The district court recognized conflict with Lang v. State, 566 So.2d 1354 (Fla. 5th DCA 1990). This Honorable Court accepted jurisdiction of this case on June 8, 1992.

SUMMARY OF THE ARGUMENT

Under Section 39.059(7), Florida Statutes (Supp. 1990), a trial court is required to provide in writing specific reasons for imposing adult sanctions on a juvenile. The lower court in this case erred in imposing adult sanctions without making these findings. Contrary to the state's arguments, Appellant did not waive this requirement by entering into a negotiated plea.

ARGUMENT

ISSUE

DID THE TRIAL COURT ERR IN IMPOSING ADULT SANCTIONS ON APPELLANT WITHOUT MAKING THE REQUIRED FINDINGS OF FACT?

The trial court adjudicated Appellant, a juvenile, guilty and sentenced him to four-years imprisonment followed by two years of probation, pursuant to the Youthful Offender Act. [R18-19,22-25] The court erred in imposing these sanctions without making written findings concerning the suitability of adult sanctions. These findings are mandatory under Section 39.059(7)(d), Florida Statutes, (Supp. 1990). The court only said adult sanctions were appropriate "based on his record and my review of his PDR. . . [and] that there was a, basically, negotiated plea with the State. . ." [R17] The trial court's sparse oral findings are an inadequate compliance with Section 39.059(7)(d). Furthermore, Appellant did not waive these findings be entering into a negotiated plea.

Under Section 39.059(7)(d), a trial court is required to provide in writing specific reasons for imposing adult sanctions on a juvenile. State v. Rhoden, 448 So.2d 1013 (Fla. 1984); Cruz v. State, 545 So.2d 500 (Fla. 4th DCA 1989); Leach v. State, 545 So.2d 520 (Fla. 5th DCA 1989). These reasons must consider all six of the criteria listed in section 39.059(7)(c), Florida Statutes, (Supp. 1990). E.g. Flowers v. State, 546 So.2d 782 (Fla. 4th DCA 1989). Subsection (7)(i) of 39.059 expresses the legislative intent that these requirements be mandatory. Finally, section

39.059(7)(d) applies even though the defendant is sentenced under the Youthful Offender Act. Lester v. State, 563 So.2d 178 (Fla. 5th DCA 1990).

In the instant case, the Second District Court of Appeal disagreed with Appellant's argument that the trial court erred in imposing adult sanctions without making the appropriate written findings. Pittman v. State, 595 So.2d 1101 (Fla. 2d DCA 1992). The court cited Davis v. State, 528 So.2d 521 (Fla. 2d DCA 1988), as authority for holding that Appellant had waived the requirements of section 39.059 by entering into a negotiated plea.

The district court has since receded from the holding in Davis. Croskey v. State, 17 FLW D1672 (Fla. 2d DCA July 10, 1992). In Croskey the court, in an en banc decision, held that a negotiated plea does not necessarily waive the requirements of section 39.059(7) absent "an intelligent and knowing waiver of the rights." Id. at 1673. This holding is consistent with decisions on the same issue in other districts. Toussaint v. State, 592 So.2d 770 (Fla. 5th DCA 1992); Taylor v. State, 534 So.2d 1181 (Fla. 4th DCA 1988); Hill v. State, 596 So.2d 1210 (Fla. 1st DCA 1992).

In the present case, the record does not manifest that Appellant exercised a knowing and intelligent waiver of his rights under section 39.059(7)(d). Explaining the terms of the plea negotiations, defense counsel said Appellant would be subject to Youthful Offender sanctions with a cap of four-years imprisonment. [R12] Neither defense counsel nor the prosecutor made an affirmative statement that the plea negotiations would preclude juvenile

sanctions. [R12] On the contrary, defense counsel, during the sentencing hearing, argued in favor of juvenile sanctions. [R16] The trial court never determined if Appellant was aware of his rights as a juvenile or if he voluntarily and intentionally relinquished them. Instead, the trial judge assumed that he had to prepare a written order containing the findings necessary for adult sanctions. [R17]

The trial court's oral references to Appellant's prior record and to the pre-disposition report are neither specific nor complete. The findings for the suitability of adult sanctions must be specific and particular to each juvenile. Bradley v. State, 559 So.2d 283 (Fla. 4th DCA 1990); Hammonds v. State, 543 So.2d 337 (Fla. 4th DCA 1989). Not only are the trial court's reasons incomplete but they were also not reduced to writing. Because of these errors, Appellant's sentence should be overturned and this case remanded to the lower court for entry of proper findings or for a determination of whether Appellant waives his right to the written findings.

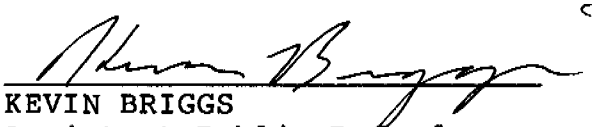
CONCLUSION

Based on the above arguments and authorities, Appellant respectfully requests that this court reverse his sentence and remand this case to the lower court for entry of written reasons for imposing adult sanctions or for a determination of a waiver of the written reasons.

CERTIFICATE OF SERVICE

I certify that a copy has been mailed to Robert Butterworth, Suite 700, 2002 N. Lois Ave., Tampa, FL 33607, (813) 873-4730, on this 30th day of July, 1992.

Respectfully submitted,



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TENTH JUDICIAL CIRCUIT
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KEVIN BRIGGS
Assistant Public Defender
Florida Bar Number 520357
P. O. Box 9000 - Drawer PD
Bartow, FL 33830

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