5-23

FILED
SID J. WHITE
APR 30 1992
CLERK, SUPREME COURT
By _____ Chief Deputy Clerk

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

BRIEF OF PETITIONER ON JURISDICTION

JAMES MARION MOORMAN
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

KEVIN H. 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

TOPICAL INDEX TO BRIEF

	PAGE NO.
PRELIMINARY STATEMENT	1
STATEMENT OF THE CASE AND FACTS	2
SUMMARY OF THE ARGUMENT	3
ARGUMENT	
ISSUE	
WHETHER THE DECISION IN PITTMAN V. STATE, CASE NO.91-00943 (Fla. 2d DCA March 25, 1992) IS IN CONFLICT WITH THE FIFTH, FOURTH, THIRD, AND FIRST DISTRICT COURTS OF APPEAL AS TO WHETHER ADULT SANCTIONS CAN BE IMPOSED ABSENT A SPECIFIC WAIVER OF THE REQUIREMENTS OF CHAPTER 39, FLORIDA STATUTES?	4
CONCLUSION	6
APPENDIX	
CERTIFICATE OF SERVICE	

TABLE OF CITATIONS

CASES	PAGE NO.
Davis v. State, 528 So.2d 521 (Fla. 2d DCA)	4, 5
Dixon v. State, 451 So.2d 485 (Fla. 3d DCA)	4
Lang v. State, 566 So.2d 1354 (Fla. 5th DCA 1990)	4, 5
Sheffield v. State, 509 So.2d 1350 (Fla. 1st DCA 1987)	4
Taylor v. State, 534 So.2d 1181 (Fla. 4th DCA 1988)	4

PRELIMINARY STATEMENT

Petitioner, WILLIAM FENELL PITTMAN, was the Petitioner in the Second District Court of Appeal and the Defendant in the trial court. Respondent, the State of Florida, was the Appellee in the Second District Court of Appeal. The appendix to this brief contains a copy of the decision rendered by the Second District Court of Appeal on March 25, 1992.

STATEMENT OF THE CASE AND FACTS

In the Circuit Court for Polk County, the state filed an information charging Petitioner, WILLIAM FENELL PITTMAN, with armed robbery. [R1-3] This offense occurred on June 29, 1990. [R2] Petitioner plead no contest to the charged offense. [R6,12]

On February 28, 1991, Petitioner appeared for sentencing before the Honorable Randall G. McDonald, circuit court judge. [R15] Petitioner was a juvenile. [R18] The trial court adjudicated Petitioner guilty and sentenced him to four years imprisonment followed by two years probation, pursuant to the Youthful Offender Act. [R18-19,22-25] The court 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] A sentencing guidelines scoresheet was filed. [R26] Petitioner filed a timely notice of appeal. [R30]

On appeal to the Second District Court of Appeal, Petitioner argued that the trial court erred in imposing adult sanctions without reducing to writing the reasons for those sanctions as required by Fla Stat. § 39.111. The appellate court affirmed the sentence on March 25, 1992. Petitioner filed a notice to invoke discretionary jurisdiction.

SUMMARY OF THE ARGUMENT

Petitioner argues that the Second District Court of Appeal's decision upholding the imposition of adult sanctions absent a knowing waiver of or record support for the mandated findings under Chapter 39, Florida Statutes, expressly and directly conflicts with contrary holdings of the Fifth, Fourth, Third, and First District Courts of Appeal. The result of the Second District's holding is that Petitioner receives a harsher sanction because he is within the jurisdiction of the Second District Court of Appeal. If the findings must be made absent a specific and affirmative waiver, a theory which the Second District Court of Appeal has rejected in other cases and in this case, then resentencing is required.

ARGUMENT

ISSUE

WHETHER THE DECISION IN PITTMAN V. STATE, CASE NO.91-00943 (Fla. 2d DCA March 25, 1992) IS IN CONFLICT WITH THE FIFTH, FOURTH, THIRD, AND FIRST DISTRICT COURTS OF APPEAL AS TO WHETHER ADULT SANCTIONS CAN BE IMPOSED ABSENT A SPECIFIC WAIVER OF THE REQUIREMENTS OF CHAPTER 39, FLORIDA STATUTES?

Florida law is in conflict on the issue of whether adult sanctions can be imposed absent a knowing waiver of the findings mandated by section 39.111, evidence of which must appear affirmatively in the record or in the plea agreement. The result of the conflict of decisions is that the Petitioner is subject to the imposition of a harsher sanction because he is within the jurisdiction of the Second District Court of Appeal.

In Lang v. State, 566 So.2d 1354 (Fla. 5th DCA 1990), Taylor v. State, 534 So.2d 1181 (Fla. 4th DCA 1988), Sheffield v. State, 509 So.2d 1350 (Fla. 1st DCA 1987), Dixon v. State, 451 So.2d 485 (Fla. 3d DCA), rev. denied, 458 So.2d 274 (Fla. 1984), the Fifth, Fourth, Third and First District Courts of Appeal held that a negotiated plea of guilty or nolo contendere does not automatically act as a waiver of the requirements of section 39.111. Although a juvenile can waive his rights under the statute, such a waiver must be manifest in the plea agreement or on the record.

In Davis v. State, 528 So.2d 521 (Fla. 2d DCA), rev. denied, 536 So.2d 243 (Fla. 1988), the Second District Court of Appeal held

there was no need for making the findings required by section 39.111 before imposing adult sanctions when the adjudication is entered pursuant to a plea agreement. In the instant case, the same court acknowledged conflict with Lang, but followed its holding in Davis.

Inasmuch as the First, Third, Fourth, and Fifth District Courts of Appeal would require findings and record support to justify an adult sentence, or knowing waiver of the statutory findings, this Court should accept jurisdiction in order to settle the conflict.

CONCLUSION

In light of the foregoing reasons, argument, and authorities, Petitioner has demonstrated that conflict does exist with the instant decision and the decisions of the Fifth, Fourth, Third, and First District Courts of Appeal so as to invoke discretionary review of this Honorable Court.

APPENDIX

PAGE NO.

1. Second District Court of Appeal opinion filed March 25, 1992. A1

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

CORNELIUS C. SIRMONS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

Case No. 90-03713

Opinion filed March 25, 1992.

Appeal from the Circuit Court for Lee County; William J. Nelson, Judge.

James Marion Moorman, Public Defender, and Jennifer Y. Fogle, Assistant Public Defender, Bartow, for Appellant.

Robert A. Butterworth, Attorney General, Tallahassee, and Erica M. Faffel, Assistant Attorney General, Tampa, for Appellee.

PER CURIAM.

Affirmed. See Davis v. State, 528 So. 2d 521 (Fla. 2d DCA), review denied, 536 So. 2d 243 (Fla. 1988). We recognize

that our decision in Davis is in conflict with Lang v. State, 566 So. 2d 1354 (Fla. 5th DCA 1990).

DANAHY, A.C.J., and PATTERSON, J., Concur.
PARKER, J., Concurs Specially.

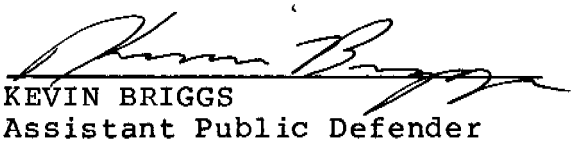
PARKER, Judge, Concurring specially.

I concur with the majority. But for this court's opinion in Davis, I would reverse this case because the record fails to show that Sirmons waived the trial court's required findings under Chapter 39, Florida Statutes. See Evans v. State, No. 91-01685 (Fla. 2d DCA Feb. 26, 1992) (concurring opinion).

CERTIFICATE OF SERVICE

I certify that a copy has been mailed to Brenda S. Taylor, Suite 700, 2002 N. Lois Ave., Tampa, FL 33607, (813) 873-4730, on this 28th day of April, 1992.

Respectfully submitted,



JAMES MARION MOORMAN
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT
(813) 534-4200

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

khb