IN THE FLORIDA SUPREME COURT
STATE OF FLORIDA

WILLIAM FENELL PITTMAN)
Petitioner,)
v.) Case No. 79,690
STATE OF FLORIDA,)
Respondent.)
_____)

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

BRIEF ON JURISDICTION

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STATEMENT OF THE CASE AND FACTS

In the instant case, the following occurred:

> MR. SOLORZANO: 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: 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. (R6)
>
> . . .
>
> THE COURT: Okay. There is no minimum mandatory sentence, but I could sentence you up to, theoretically, life; however, the State, in exchange for your plea of no contest to this charge, which is what you wish to do is enter a plea of no contest to it?
>
> THE DEFENDANT: Yes sir.
>
> THE COURT: In exchange for that, the State is recommending that I sentence you to four years as a youthful offender or, I guess, up to four years as a youthful offender to be followed by some probation; restitution, as you've just heard, be ordered and I may or may not recommend boot camp, depending on what comes out of the presentence investigation report; do you understand all of that?
>
> THE DEFENDANT: Yes sir. (R8)
>
> . . .
>
> THE COURT: Okay. 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.

MR. KIRKLAND: Yes Sir.

THE COURT: Also based on the fact that there was a, basically, negotiated plea with the State Attorney's -- (R17)

SUMMARY OF THE ARGUMENT

There is no conflict between the instant case and that of Lang v. State, infra inasmuch as the instant plea bargain contemplated a waiver of findings pursuant to Fla. Stat. §39.111 and Lang v. State holds that such a waiver can in fact be manifest in the plea agreement.

ARGUMENT

ISSUE I

WHETHER THE DECISION IN PITTMAN V. STATE, CASE NO. 91-00943 (FLA. 2ND 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, FLA. STAT.

The colloquy referred to herein in the Statement of the Case and Facts contemplated clearly the imposition of an adult sentence. Not only does this clearly contemplate a waiver of written findings, but fails to create conflict with Lang v. State, 566 So.2d 1354 (5th DCA 1990) because that opinion specifically held that a waiver could be manifest in a plea agreement. Taylor v. State, 534 So.2d 1181 (4th DCA 1988) cited by Petitioner in his assertion of conflict, involved not a plea but rather a trial. Nevertheless the court stated:

> "It appears to us that where a waiver has been found to have occurred it was because, in connection with a plea bargain, the defendant was questioned in open court, as is customarily done, to determine whether his plea was intelligent and knowing. If his plea was intelligent and knowing, he had waived the §39.111 procedure having intelligently and knowingly agreed to imposition of the particular adult sanctions." Id. at 1182.

In Sheffield v. State, 509 So.2d 1350 (1st DCA 1987) also cited by Petitioner in his assertion of conflict, the court found there was in the nolo plea entered in that case, no indication in

the plea bargain that the juvenile bargained away his right to have the trial court consider whether adult sanctions were suitable pursuant to Fla. Stat. §39.111. Therefore that opinion too contemplates that a waiver can be inherent in the bargain itself. Respondent would assert the instant plea before the court clearly incorporated a waiver of the necessity of any findings pursuant to §39.111 (Fla. Stat.) in order for Mr. Pittman to be sentenced as an adult.

Finally, in Dixon v. State, 451 So.2d 485 (3rd DCA 1984) also asserted by Petitioner in his brief before this Court on jurisdiction in his assertion of conflict held, on rehearing, on the basis of this Court's opinion in State v. Rhoden, 448 So.2d 1013 (Fla.1984) which was decided subsequent to the Third District's original decision in Dixon v. State that the findings required by §39.111(6)(c)(d) Fla. Stat. (1983) were required to be made either after trial or as in Dixon upon a plea of guilty or nolo contendere. The opinion entirely deletes any contemplation that a plea agreement itself may incorporate a waiver of the necessity of such findings and therefore cannot possibly be in conflict with the instant case.

In light of the foregoing, it is apparent that no conflict exists between the instant case and any of the cases cited by Petitioner, and in any event the decision of the Second District Court of Appeals was so clearly correct that this Court need not exercise its jurisdiction over the instant cause.

CONCLUSION

WHEREFORE based on the foregoing argument, citations of authority and references to the record, this Honorable Court should decline to exercise its jurisdiction over the instant cause.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to KEVIN H. BRIGGS, Assistant Public Defender, Polk County Courthouse, P. O. Box 9000-Drawer PD, Bartow, Florida 33830 this 21st day of May, 1992.

COUNSEL FOR RESPONDENT