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IN THE SUPREME COURT 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 OF RESPONDENT ON THE MERITS

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SUMMARY OF THE ARGUMENT

The trial court imposed adult sanctions upon Petitioner pursuant to the Youthful Offender Act. The trial court stated 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. . ." Respondent asserts that written findings for the imposition of an adult sentence upon a juvenile pursuant to a plea bargain are not necessary.

In the instant case the trial court discussed on two different occasions whether to sentence Petitioner as an adult. The defense attorney stated that if the court found that adult sanctions were appropriate that the court follow the plea agreement (which called for adult sanctions). Because the trial court discussed the need for adult sanctions on two separate occasions and because the defense counsel agreed to these sanctions (as long as they followed the plea agreement) the trial court properly sentenced Petitioner as an adult.

Finally Respondent asserts that public policy favors plea agreements because a judgment and sentence is imposed which is suitable to both the state and the defendant without the use of a costly trial.

ARGUMENT

ISSUE

WHETHER THE TRIAL COURT PROPERLY IMPOSED ADULT SANCTIONS ON APPELLANT.

The trial court imposed adult sanctions upon Petitioner pursuant to the Youthful Offender Act. (R. 18, 19, 20-25). The trial court stated 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. . ." (R. 17).

Petitioner asserts that the trial court's findings were inadequate based on Section 39.059(7)(d) Fla. Stat. The State strongly disagrees.

Respondent asserts that written findings for the imposition of an adult sentence upon a juvenile pursuant to a plea bargain are not necessary. Davis v. State, 528 So.2d 521 (Fla. 2nd DCA), review denied, 536 So.2d 243 (Fla. 1988)

Appellee would ask this Court to consider by analogy, Long v. State, 540 So.2d 903 (2nd DCA 1990) where a plea agreement was found to be a waiver of written reasons for a guidelines departure sentence. Additionally, in Lang v. State, 466 So.2d 1354 (5th DCA 1990) the court held that a juvenile can waive his rights under the provisions allowing imposition of adult sanctions. It only added that those reasons be manifest either in the plea bargain or on the record. Id. at 1357. That certainly is not conflict; it is in accord with Long and Davis, merely adding further conditions.

In Broome v. State, 466 So.2d 1271 (1st DCA 1985) the court held that a plea agreement for a specific sentence pursuant to a plea bargain obviates the necessity of written findings. Id. at 1272. Here, the Appellant pled to a specific sentence.

Petitioner cites State v. Rhoden, 448 So.2d 1013 (Fla. 1984). However Rhoden which addresses the statutory rights of juveniles did not involve a plea bargain.

Petitioner also cites Croskey v. State 17 FLW D1672 [Fla. 2nd DCA Opinion filed July 10, 1992] in which the Second District Court of appeal citing Rhoden supra held that the trial court erred in sentencing the defendant as an adult because the defendant did not intelligently and knowingly waive his right to be sentenced under section 39.059(7) Fla. Stat. However the court stated that in Croskey "there was no discussion at the sentencing hearing concerning the court's decision to sentence Croskey as an adult." Id at D1672. The Court went on to state that:

> It is possible that a juvenile could enter a negotiated plea in exchange for an adult sentence without being aware that he has the right to have his suitability for such sanctions considered under chapter 39. We are not satisfied that a plea entered under such circumstances, as in this case, would constitute an intelligent and knowing waiver of that right. Accordingly, we recede from *Davis* to the extent that it fails to recognize the requirement of an intelligent and knowing waiver.
>
> Id. at D1673

In the instant case the trial court discussed on two different occasions whether to sentence Petitioner as an adult - plea hearing of January 15, 1991 (R. 5-12) and sentencing hearing of February 28, 1991. (R. 15-20).

Further the defense attorney at one point stated that if the court found that adult sanctions were appropriate that the court follow the plea agreement (which called for adult sanctions) (R. 16). Accordingly under Croskey Respondent asserts that because the trial court discussed the need for adult sanctions on two separate occasions and because the defense counsel agreed to these sanctions (as long as they followed the plea agreement) the trial court properly sentenced Petitioner as an adult.

Finally Respondent asserts that public policy favors plea agreements because a judgment and sentence is imposed which is suitable to both the state and the defendant without the use of a costly trial. To allow a defendant to successfully appeal a sentence obtained pursuant to a plea agreement emasculates the use of plea agreements which are a useful and necessary part of our criminal justice system.

CONCLUSION

Based on the foregoing arguments and citations of authority, the appellee respectfully requests that this Honorable Court affirm the judgment and sentence of the trial court.

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 BRIGGS, Assistant Public Defender, P. O. Box 9000--Drawer PD, Bartow, Florida 33830, this 20th day of August, 1992.

OF COUNSEL FOR RESPONDENT