5-23

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

IN THE SUPREME COURT OF FLORIDA

CORNELIUS C. SIRMONS, :

Petitioner, :

vs. : Case No. 79,754

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

JENNIFER Y. FOGLE
ASSISTANT PUBLIC DEFENDER
FLORIDA BAR NUMBER 628204

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

TABLE OF CITATIONS

PRELIMINARY STATEMENT

Petitioner, CORNELIUS C. SIRMONS, was the Appellant 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

On August 3, 1990, the State Attorney for the Twentieth Judicial Circuit in and for Lee County, Florida, filed a delinquency petition alleging that the Petitioner, fifteen-year-old CORNELIUS C. SIRMONS, committed robbery with a firearm, contrary to Fla. Stat. § 812.13, and shot at, within, or into a building, contrary to Fla. Stat. § 790.19. The State moved to waive juvenile jurisdiction over the Appellant and to certify him for trial as an adult. On August 22, 1990, after hearing testimony from State and defense witnesses, the juvenile court waived jurisdiction of the cause to adult court.

On November 1, 1990, Mr. Sirmons entered pleas of no contest to the charges in exchange for a sentence with a prison cap of nine years if sentenced as an adult, and a three-year minimum mandatory sentence. The trial court was to make the decision as to whether or not to sentence Mr. Sirmons as an adult, although the Appellant hoped for a youthful offender sentence. Defense counsel reserved the right to appeal the order waiving juvenile jurisdiction.

Although juvenile sanctions were recommended in the predisposition report, the trial court declined to impose juvenile or youthful offender sanctions and sentenced Mr. Sirmons as an adult on December 6, 1990. The court imposed concurrent nine-year terms in prison on the charges, with a three-year minimum mandatory sentence imposed on the charge of robbery with a firearm. The sentence was within the recommended guideline sentence of nine to twelve years in prison.

Mr. Sirmons timely filed notice of appeal on December 27, 1990. On appeal to the Second District Court of Appeal he argued that the trial court erred in imposing adult sanctions without stating or reducing to writing the reasons for those sanctions as required by Fla Stat. § 39.111, absent a specific waiver of the statutory requirements. The appellate court affirmed the sentence on March 25, 1992. Its decision conflicts with decisions rendered by the First, Third, Fourth, and Fifth District Courts of Appeal.

SUMMARY OF THE ARGUMENT

Mr. Sirmons 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 Mr. Sirmons 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 SIRMONS V. STATE, CASE NO.90-03713 (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?

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 findings and 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 Sirmons v. State, Case No. 90-03713 (Fla. 2d DCA March 25, 1992), the same court acknowledged conflict with Lang, but followed its holding in Davis.

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.

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.

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 Erica M. Raffel, Suite 700, 2002 N. Lois Ave., Tampa, FL 33607, (813) 873-4730, on this 30th day of April, 1992.

Respectfully submitted,

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

JENNIFER Y. FOGLE
Assistant Public Defender
Florida Bar Number 628204
P. O. Box 9000 - Drawer PD
Bartow, FL 33830

JYF/tll