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SEP 16 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

REPLY BRIEF OF PETITIONER ON THE MERITS

JAMES MARION MOORMAN
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

JENNIFER Y. FOGLE
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ATTORNEYS FOR PETITIONER

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ARGUMENT

ISSUE

WHETHER THE TRIAL COURT ERRED IN
IMPOSING ADULT SANCTIONS AGAINST THE
JUVENILE PETITIONER?

In addition to the arguments presented in Petitioner's Initial Brief on the Merits, Mr. Sirmons makes the following reply to the Brief of Respondent on the Merits:

Respondent asserts that a specific adult sentence of nine years in prison was bargained for, should foreclose the imposition of any other sentence, and should not be able to be attacked. In support of this the State further argues that the failure of the Statement of Judicial Acts to be Reviewed to list the absence of written sentencing findings should imply the waiver or impropriety of appealing that issue. Respondent's conclusions as to the facts, the law, and public policy considerations are misplaced.

First, the Petitioner entered a plea with the understanding that if he were sentenced to the Department of Corrections, the term of the sentence would not be more than nine years. This agreement was a cap on prison time if adult sanctions were imposed and did not foreclose juvenile or youthful offender sanctions.

Second, the statement of judicial acts to be reviewed contemplated by Florida Rule of Appellate Procedure 9.140 is not intended to be the equivalent of assignments of error under former Rule 3.5. An error or inadequacy in the statement should not be

relevant to the disposition of any case. See Committee Notes to Fla. R. App. P. 9.140 (d).

Third, public policy considerations compel that specifically granted juvenile rights continue to be protected by this Court. In Florida, juvenile rights are granted exclusively by the legislature. State v. Cain, 381 So.2d 1361, 1363 (Fla. 1980). Under the juvenile statutory scheme, even when a juvenile is convicted in adult court he is still given special treatment as a juvenile and there is no abandonment of rehabilitative goals. Cain, 381 So.2d at 1367. As stated in Cain, the protected rights afforded juveniles include an entitlement to be sentenced pursuant to section 39.111:

The court must follow the procedure provided in subsection 39.111 (6), Florida Statutes (Supp. 1978), and must consider the criteria enumerated in subsection 39.111 (6) (c) which in substantial part mirror the criteria the court is to consider in waiving juvenile jurisdiction in the first place. (Emphasis added).

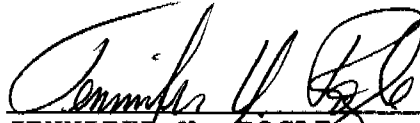
381 So.2d at 1367.

Based on the arguments presented in the Initial Brief of Petitioner on the Merits and his Reply Brief, Mr. Sirmons' case must be reversed.

CERTIFICATE OF SERVICE

I certify that a copy has been mailed to Erica M. Raffel and Peggy A. Quince, Suite 700, 2002 N. Lois Ave., Tampa, FL 33607, (813) 873-4730, on this 14th day of September, 1992.

Respectfully submitted,



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