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IN THE SUPREME COURT OF FLORIDA

JOSEPH INNES,

Petitioner,

v. Case No. 79,902

STATE OF FLORIDA.

Respondent.

_____/

ON DISCRETIONARY REVIEW FROM THE
SECOND DISTRICT COURT OF APPEAL, STATE OF FLORIDA

RESPONDENT'S ANSWER BRIEF ON THE MERITS

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STATEMENT OF THE CASE AND FACTS

Appellant/Petitioner, JOSEPH INNES, demanded a jury trial on his various charges. (R. 69,85,105)

At the sentencing hearing, talk immediately centered around Appellant's guidelines score. (R. 124-135) After discussing restitution and victim impact, the court made a sentencing offer. (R. 142) Thereafter, Appellant and his public defender discussed the offer. Off the record. (R. 144) When discussing the sentencing option of "boot camp", the court thought that he might have to sentence Appellant as a juvenile. (R. 145) The public defender, however, indicated that there was a youthful offender boot camp. (R. 145) Once again, there was a brief recess for reconsideration of the sentencing scheme. (R. 146) Ultimately, Appellant's public defender announced that his client would enter a plea of guilty with the understanding that the would receive a four year youthful offender sentence.

Upon questioning by the court, Appellant proceeded to waive his various constitutional rights. (R. 148) The nature and extent of the prison sentence he was about to receive was outlined to him. (R. 149) Appellant understood what was going on in court that day. (R. 149) After sentence was pronounced, the public defender agreed that the judge was required to make certain findings for the record. (R. 152)

The court specifically found that the public needed protection from Appellant. (R. 153) He adopted HRS's finding that the juvenile justice system can no longer handle Appellant. (R. 153) He noted that there was an increasing degree in

Appellant's criminality. (R. 153) Finally, based upon the criterion of Florida Statute 39, the judge found adult sanctions to be appropriate. (R. 153) The public defender lodged no objections to these findings. (R. 153)

SUMMARY OF THE ARGUMENT

Inasmuch as Appellant now argues that the Second District has aligned itself with its sister districts on this issue, there is no conflict left for this Court to resolve. Therefore, he should be directed to go back to the trial court for correction of sentence without further consideration by this Court.

In any event, Appellant bargained for his particular adult sentence and cannot now be heard to disallow it. The Second District allows juvenile defendant's to enter into plea deals without regard to Chapter 39 considerations.

ARGUMENT

ISSUE

WHETHER THIS COURT HAS CONFLICT JURISDICTION WHERE THE LOWER COURT HAS ALREADY UNDERTAKEN TO ALIGN ITSELF WITH ITS SISTER DISTRICT COURTS OF APPEAL AND, ALTERNATIVELY, WHETHER THIS COURT CAN AFFIRM THIS SENTENCE INASMUCH AS APPELLANT BARGAINED FOR HIS ADULT SENTENCE?

Appellant has argued that the Second District has already admitted its error in this case when it issued its opinion in Croskey v. State, 601 So.2d 1326 (Fla. 2d DCA 1992) which, ultimately, aligns this district with the Fifth District and its opinion in Lange v. State, 566 So.2d 1354 (Fla. 5th DCA 1990). The flip side of his argument automatically slips the carpet of jurisdiction out from underneath this Honorable Court.

Essentially, there is no longer any inter-district conflict for this Court to resolve. In Croskey, the Second District cited, with approval, the Lange decision. It was the Lange decision that the Second District found to be in conflict with its previous decision in Davis v. State, 528 So.2d 521 (Fla. 2d DCA 1988). Thus, inasmuch as this Court no longer has to "right" one of its inferior courts, there is no longer any need to issue an opinion on an issue which is the subject of inter-district agreement.

Of course, Appellant will claim that his particular case has not had the benefit of the Second District's "righting" of itself. Well, the Second District in Croskey specifically indicated that it receded from Davis and its progeny. Croskey, at 1327. If one accepts Appellant's proposition that it is fundamental reversible error to have sentenced him without

specific findings relating to adult sentencing, then, ipso facto, his sentence in "illegal". Surely, Appellant cannot now claim that he received an "legal" sentence and, at the same time, ask this Honorable Court to correct it. Therefore, in conformity with Rule 3.800, Florida Rules of Criminal Procedure, this Court is now asked to remand this case so that Appellant can appropriately move for correction of his sentence. Upon remand, the Second District will be free to impose an adult sanction under Croskey.

Should, for some reason, this Court still wish to entertain this issue despite the admitted lack of conflict, Appellee briefly offers the following. However, it must be noted that nothing in the foregoing argument should in any way be taken as concession of error on any issue.

Appellant desires to be resentenced under the terms of Croskey. More he cannot ask for. Yet, therein, the Second District made a point to say that the sentencing court need only "consider" the criteria as set forth in Section 39.059(7), Florida Statutes. It appears form the record that the trial judge considered all such factors. After all, he found that the public needs protection from Appellant. (R. 153). He found that HRS and the juvenile justice system can no longer handle Appellant. (R. 153) He further found that Appellant appeared to be engaged in an increasing degree of criminality even though such crimes were mainly perpetrated against property. (R. 153) Such findings take into consideration the criteria in 39.059(c)1,3,5, and 6. Finally, the judge referred to Section 39

in general and found that adult sanctions were appropriate. (R. 153) Thus, by inescapable implication, the court took into consideration all the criterion, even though he may not have specifically enumerated a finding concerning criteria 2 (premeditation and willfulness). Although Appellant may point to Hill v. State, 17 F.L.W. D2067 (Fla. 1st DCA September 4, 1992) for the proposition that failure to so much as consider just one of the enumerated criteria is reversible error, the Hill decision has, as of this writing, been held by that court. Ergo, inasmuch as the Croskey decision only requires "consideration" of the criteria, the trial court cannot be found to have committed error by failing to make the sort of copious findings and conclusions desired by Appellant.

Moreover, in Croskey, the Second District noted that this Court in State v. Rhoden, 448 So.2d 1013 (Fla. 1984) found "that a juvenile may waive the right to have the statutory criteria considered and findings made by the trial court, but the waiver must be voluntarily and knowingly made". Additionally, the Croskey court found it possible for a juvenile to receive adult sanctions by way of a negotiated plea agreement, even though such sanctions may be imposed without regard to Section 39 requirements. Id, at 1327. Depicted in this case is a juvenile who, from the outset, desired an adult jury trial and looked to the guidelines for sentencing. He waived such adult rights along with all other adult constitutional rights. He twice took time out to reflect upon the court's sentencing offer and, thereafter, agreed to it. He does not lay claim to any concept of

"involuntary plea" in this case. Accordingly, this Court is free to conclude that Appellant simply got what he bargained for from the outset and that there was no need to consider the adult sentencing criteria.

CONCLUSION

In the final analysis, all that this Court can do for Appellant is allow him to be resentenced as an adult. At most, this Court can agree that he bargained for the sentence he got and that he is not entitled to any sort of resentencing. Thus, the best course of action (short of affirming this case based upon his acceptance of the plea offer) this Court can take would be to direct Appellant back to the trial court so that he can move to correct his sentence under the terms of Croskey.

WHEREFORE, this Court is urged to decline jurisdiction in this case.

Respectfully submitted,

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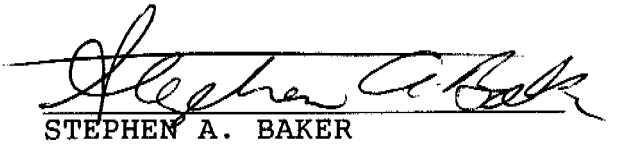

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COUNSELS FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been forwarded by U.S. Mail to Allyn Giambalvo, Assistant Public Defender, Criminal Court Complex, 5100 144th Avenue North, Clearwater, Florida 34620 this 6th day of November, 1992.

COUNSEL FOR RESPONDENT