IN THE SUPREME COURT OF FLORIDA

ANTONIO TROUTMAN,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

_____/

CASE NO. 80495
1DCA CASE NO. 92-298

ON DISCRETIONARY REVIEW FROM
THE FIRST DISTRICT COURT OF APPEAL

PETITIONER'S BRIEF ON JURISDICTION

NANCY A. DANIELS
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

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TABLE OF CITATIONS

IN THE SUPREME COURT OF FLORIDA

ANTONIO TROUTMAN,

Petitioner,

v.

CASE NO.
1DCA CASE NO. 92-298

STATE OF FLORIDA,

Respondent.

BRIEF OF PETITIONER ON JURISDICTION

PRELIMINARY STATEMENT

Petitioner was the defendant in the trial court, and will be referred to as petitioner in this brief. Attached hereto as Appendix A is the split decision of the lower tribunal. Appendix B is petitioner's motion for rehearing. Appendix C is the order denying rehearing.

II STATEMENT OF THE CASE AND FACTS

As stated by the lower tribunal, the facts are:

Petitioner, age 16, was charged initially with kidnapping to facilitate a felony, grand theft auto, and aggravated assault with a deadly weapon. Subsequentially, he pled nolo contendere to the offense of false imprisonment and grand theft. Appendix A at 2.

The trial court noted that petitioner had no prior record, but in view of the serious nature of petitioner's conduct, the court was persuaded that juvenile sanctions were inadequate to impress upon him the consequences of his actions. The court announced its intention to treat petitioner as an adult. Adjudication of guilt was withheld, and the trial court placed petitioner on probation for three years. In doing so, the court cautioned petitioner that a violation of probation would result in an adjudication of guilt, and thus a criminal record. A written order articulating the rationale for imposing adult sanctions was filed three days later. Appendix A at 2-3.

The judge's written reasons are quoted in a footnote in the majority opinion:

> 1. The court primary charge in this case, false imprisonment, was committed in a premeditated and willful manner and was extremely serious, given that the defendant perpetrated the false imprisonment with the use of a scissors, which could be considered a deadly weapon. The defendant is just shy of his seventeenth birthday; however, he demonstrates a certain street sophistication beyond his chronological age.

> 2. The defendant has only one prior contact with the juvenile authorities, which was not a serious offense.
>
> 3. The period of time available to impose juvenile sanctions is insufficient to adequately protect the community and to afford the defendant sufficient counseling to ensure his rehabilitation.
>
> 4. The imposition of juvenile sanctions are insufficient to impress upon the defendant the seriousness of this type of action. Appendix A at 4.

On appeal, petitioner argued this written order was insufficient, because it did not address each and every one of the six enumerated criteria contained in Section 39.059(7)(c), Florida Statutes (1991). The majority of the lower tribunal disagreed:

> Application of the six enumerated criteria to the trial court's written order setting forth reasons for imposing adult sanctions indicates that in this case the court considered each factor, albeit not in the express language of the statute [emphasis added]. ... We conclude that a reading in pari materia of the sentencing transcript and the written order demonstrates sufficient, as opposed to rote, compliance [emphasis added] with the requirements of section 39.059(7)(c). Appendix A at 3-5.

Judge Zehmer, in dissent, noted that the predisposition report had recommended that petitioner be sentenced as a juvenile, and would have strictly construed the statute. Appendix A at 6. He further observed the majority decision was contrary to a recent decision of the same court. Id.

Petitioner filed a timely motion for rehearing and rehearing en banc, pointing out that the decision to allow the

judge's comments at the sentencing hearing to substitute for a written order addressing each and every statutory criteria was incorrect and contrary to the statute and other case law, including a recent case from the First District. Appendix B. On September 14, 1992, rehearing was denied without comment. Appendix C.

On September 18, 1992, a timely notice of discretionary review was filed.

III SUMMARY OF ARGUMENT

Petitioner will argue in this brief that the majority decision of the lower tribunal is in direct and express conflict with a decision of this Court and the other district courts of appeal. The statute allowing a juvenile to be sentenced as an adult contains six criteria which must be addressed by the judge to justify adult sanctions. The statute absolutely requires the judge to render a written order addressing each and every criteria.

Cases construing this statute, and its predecessor, uniformly hold that the failure to comply with the statutory requirements constitutes reversible error. The decision of the lower tribunal, which allows substantial compliance with the statute to be sufficient, is in express and direct conflict with those cases.

IV ARGUMENT

THE DECISION OF THE LOWER TRIBUNAL, THAT A JUDGE WHO SENTENCES A JUVENILE AS AN ADULT NEED NOT ADDRESS EACH OF THE STATUTORY CRITERIA IN WRITING, IS IN EXPRESS AND DIRECT CONFLICT WITH PRIOR DECISIONS OF THIS COURT AND THE OTHER DISTRICT COURTS OF APPEAL.

Petitioner was a 16 year old juvenile with no prior record when he stood before the court for sentencing as an adult for two third degree felonies. He should have been protected from the imposition of adult probation by Section 39.059(7)(c), Florida Statutes, which provides:

> Suitability or nonsuitability for adult sanctions shall be determined by the court before any other determination of disposition. The suitability determination shall be made by reference to the following criteria:
>
> 1. The seriousness of the offense to the community and whether the protection of the community requires adult disposition.
>
> 2. Whether the offense was committed in an aggressive, violent, premeditated, or willful manner.
>
> 3. Whether the offense was against persons or against property, greater weight being given to offenses against persons, especially if personal injury resulted.
>
> 4. The sophistication and maturity of the child.
>
> 5. The record and previous history of the child, including:
>
> a. Previous contacts with the department, the Department of Corrections, other law enforcement agencies, and courts;
>
> b. Prior periods of probation or community control;

c. Prior adjudications that the child committed a delinquent act or violation of law; and

d. Prior commitments to institutions.

6. The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the child if he is assigned to services and facilities for delinquent children.

The requirement of a written order is found in Section 39.059(7)(d), Florida Statutes (1991):

> Any decision to impose adult sanctions shall be in writing and in conformity with each of the above criteria. The court shall render a specific finding of fact and the reasons for the decision to impose adult sanctions.

The majority of the lower tribunal held the order under review demonstrated "sufficient, as opposed to rote, compliance" with the requirements of Section 39.059(7)(d).

To the contrary, sufficient or substantial compliance is not enough; the legislature intended rote compliance. The statute clearly requires that the written order make specific findings as the each and every one of the criteria.

Other district courts of appeal have held that failure to address all of the criteria in writing required reversal under the predecessor to this statute, Section 39.111(6) and (7), Florida Statutes (1989). Meyers v. State, 593 So.2d 609 (Fla. 5th DCA 1992); Flowers v. State, 546 So.2d 782 (Fla. 4th DCA 1989); and Gooden v. State, 536 So.2d 392 (Fla. 4th DCA 1989).

Other district courts of appeal have held that failure to address all of the criteria in writing requires reversal under the present statute. Bell v. State, 598 So.2d 203 (Fla. 4th

DCA 1992); Horne v. State, 593 So.2d 309 (Fla. 5th DCA 1992); Riley v. State, 588 So.2d 1035 (Fla. 4th DCA 1991); and Kohler v. State, 588 So.2d 689 (Fla. 4th DCA 1991). The majority's holding, that oral comments at the sentencing hearing can substitute for a written order, and that "rote" compliance with the statute is not necessary, is in express and direct conflict with these cases.

In State v. Rhoden, 448 So.2d 1013, 1016-17 (Fla. 1984), this Court held:

> It is abundantly clear that the purpose of this legislation requiring the trial court to place in writing its findings of fact and reasons for imposing an adult sentence on a juvenile is to facilitate an intelligent appellate review of such a sentence.
>
> * * *
>
> The juvenile justice statutory scheme, as adopted by the Florida Legislature, grants to juveniles the right [emphasis in original] to be treated differently from adults. The legislature has emphatically mandated that trial judges not only consider the specific statutory criteria pertaining to the suitability of adult sanctions, but that they also reduce to writing their findings of fact and reasons for imposing an adult sentence on a juvenile [emphasis added]. A written order is necessary in order to make effective the right of sentence review granted to juveniles by the legislature. See section 39.14, Florida Statutes (1981). This right of sentence review is not provided to adults.

The majority's holding, that oral comments at the sentencing hearing can substitute for a written order, and that "rote" compliance with the statute is not necessary, is in express and direct conflict with Rhoden. Appellate review of the reasons

for adult sanctions is not facilitated if the appellate court must comb the record of the sentencing hearing to determine if the judge orally addressed each and every criteria in the statute.

Similarly, the legislature has required that reasons for departure for the guidelines be in written form:

> The sentencing guidelines shall provide that any sentences imposed outside the range recommended by the guidelines be explained in writing by the trial judge.

Section 921.001(6), Florida Statutes. This requirement is mandatory, and oral reasons do not satisfy the statute. Pope v. State, 561 So.2d 554 (Fla. 1990). The reasons for requiring a comprehensive written order are obvious -- the imposition of adult sanctions on a juvenile is a serious sentencing decision, and the judge must justify his decision in writing. These are the same policy reasons which moved this Court to require contemporaneous written departure orders in Ree v. State, 565 So.2d 1329, 1332 (Fla. 1990):

> We realize this procedure will involve some inconvenience for judges. However, a departure sentence is an extraordinary punishment that requires serious and thoughtful attention by the trial court.

Exposing a juvenile to the horrors of adult prison is also an "extraordinary punishment" which requires a "serious and thoughtful" written order addressing each statutory criteria. Thus, the lower tribunal's holding is in conflict with the holdings in Pope and Ree.

V CONCLUSION

Based upon the foregoing argument, reasoning, and citation of authority, petitioner requests that this Court accept jurisdiction over this case and proceed to a decision on the merits.

Respectfully submitted,

NANCY A. DANIELS
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Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the forgoing Initial Brief of Petitioner has been furnished by mail to Wendy S. Morris, Assistant Attorney General, 2020 Capital Circle Southeast, Alexander Building, Suite 211, Tallahassee, Florida 32301, and a copy has been mailed to petitioner, #295 Scott Drive, Monticello, Florida 32344, this 22nd day of September, 1992.

P. DOUGLAS BRINKMEYER

IN THE DISTRICT COURT OF APPEAL

FIRST DISTRICT, STATE OF FLORIDA

ANTONIO TROUTMAN,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

_____/

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND DISPOSITION THEREOF IF FILED.

CASE NO. 92-298

Opinion filed July 29, 1992.

An Appeal from the Circuit Court for Jefferson County; Kevin P. Davey, Judge.

Nancy A. Daniels, Public Defender, and P. Douglas Brinkmeyer, Assistant Public Defender, Tallahassee, for Appellant.

Robert A. Butterworth, Attorney General, and Wendy S. Morris, Assistant Attorney General, Tallahassee, for Appellee.

JOANOS, Chief Judge.

Appellant seeks reversal of the imposition of adult sanctions, on grounds that the trial court failed to consider all of the factors enumerated in section 39.059(7)(c), Florida Statutes (1991). We affirm.

Appellant was charged initially with kidnapping to facilitate a felony, grand theft auto, and aggravated assault with a deadly weapon. Subsequently, he pled nolo contendere to the offenses of false imprisonment and grand theft. These charges arose from an incident in which appellant approached the victim as she was entering her vehicle. He detained the victim with a question, then brandished a large pair of scissors, and informed her that he was going with her. Appellant forced his way into the victim's vehicle, and took her keys. As he attempted to start the vehicle, the victim eluded him and sought help. Appellant was observed fleeing the scene, and was later contacted at his home.

At the sentencing proceeding, the victim provided the court with an account of appellant's conduct since the charged offenses. This account indicated that appellant was enjoying the notoriety generated by his actions, including the nickname "Scissorhands" applied by his peers. The assistant state attorney recited the statutory requirements when imposing adult sanctions in a juvenile proceeding, addressed the serious nature of the instant offense with reference to those requirements, and noted the similarity of the offense in this case to an encounter between appellant and another woman which had taken place the day before this incident.

The trial court noted that appellant had no prior record, but in view of the serious nature of appellant's conduct, the court was persuaded that juvenile sanctions were inadequate to

impress upon him the consequences of his actions. The court announced its intention to treat appellant as an adult. Adjudication of guilt was withheld, and the trial court placed appellant on probation for three years. In so doing, the court cautioned appellant that a violation of probation would result in an adjudication of guilt, and thus a criminal record. A written order articulating rationale for imposing adult sanctions was filed three days later.

Prior to a determination whether adult sanctions should be imposed upon a juvenile, the trial court is required to consider the six criteria enumerated in section 39.059(7)(c), Florida Statutes (1991). See State v. Rhoden, 448 So.2d 1013 (Fla. 1984). The decision to impose adult sanctions must be supported by a written order or a transcript containing the requisite findings of fact and reasons for imposing adult sanctions. Hodgson v. State, 590 So.2d 33 (Fla. 1st DCA 1992); Martin v. State, 547 So.2d 998, 999-1000 (Fla. 1st DCA 1989); Stickles v. State, 579 So.2d 878, 879 (Fla. 2d DCA 1991). Failure to address even one of the criteria requires reversal and remand. Taylor v. State, 593 So.2d 1147, 1148 (Fla. 1st DCA 1992).

Application of the six enumerated criteria to the trial court's written order setting forth reasons for imposing adult sanctions indicates that in this case the court considered each factor, albeit not in the express language of the statute.[1]

---

[1] The trial court's reasons for the imposition of adult sanctions

Rather, the factors were addressed briefly but appropriately in the written order with reference to the factual context of this case. For example, factor three, pertaining to whether the offense was against persons or property, was addressed in the court's oral remarks at sentencing and in the written order, by a reference to the premeditated and willful manner in which the primary charge, false imprisonment, was perpetrated. We conclude that a reading in pari materia of the sentencing transcript and

---

were stated thusly:

> The Court imposed adult sanctions in lieu of juvenile sanctions in this case for the following reasons:
>
> 1. The primary charge in this case, false imprisonment, was committed in a premeditated and willful manner and was extremely serious, given that the Defendant perpetrated the false imprisonment with the use of a scissors, which could be considered a deadly weapon. The Defendant is just shy of his seventeenth birthday; however, he demonstrates a certain street sophistication beyond his chronological age.
>
> 2. The Defendant has only one prior contact with the juvenile authorities, which was not a serious offense.
>
> 3. The period of time available to impose juvenile sanctions is insufficient to adequately protect the community and to afford the Defendant sufficient counseling to ensure his rehabilitation.
>
> 4. The imposition of juvenile sanctions are insufficient to impress upon the Defendant the seriousness of this type of action.

the written order demonstrates sufficient, as opposed to rote, compliance with the requirements of section 39.059(7)(c).

Accordingly, the imposition of adult sanctions is affirmed.

ALLEN, J., CONCURS. ZEHMER, J., DISSENTS WITH OPINION.

ZEHMER, J. (dissenting).

The trial court determined to sentence this sixteen-year-old juvenile delinquent as an adult pursuant to his nolo contendere plea to having committed the offenses of false imprisonment and grand theft. The court withheld adjudication and placed appellant on adult probation. Appellant had no prior criminal record and the predisposition report recommended that he be handled as a juvenile and placed on community control. Section 39.059, Florida Statutes (1991), contains specific requirements that must be strictly followed before sentencing a juvenile as an adult. Subsection 39.059(7)(c) lists the six criteria that must be referenced in making such adjudication, and subsection 39.059(7)(d) requires that the "decision to impose adult sanctions shall be in writing and in conformity with each of the above criteria," and that the "court shall render a specific finding of fact and the reasons for the decision to impose adult sanctions." Failure of the written order to comply with these requirements requires reversal. E.g., Taylor v. State, 593 So. 2d 1147 (Fla. 1st DCA 1992). I am unable to join in the majority's decision to affirm because the order under review does not address each of the mandatory criteria and thus does not comply with the statutory requirements.

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT OF FLORIDA

ANTONIO TROUTMAN,	:	
Appellant,	:	
v.	:	CASE NO. 92-298
STATE OF FLORIDA,	:	
Appellee.	:	
	:	

MOTION FOR REHEARING AND MOTION FOR REHEARING EN BANC

COMES NOW the appellant, by and through the undersigned, and moves this Court to grand rehearing from its opinion filed July 29, 1992, and as grounds therefore says:

1) The majority may have overlooked or failed to consider that Section 39.059(7)(d), Florida Statutes (1991) requires each and every finding to be in a written order:

> Any decision to impose adult sanctions shall be in writing and in conformity with each of the above [subsection (c)] criteria. The court shall render a specific finding of fact and the reasons for the decision to impose adult sanctions. Such order shall be reviewable on appeal by the child pursuant to s. 39.069. (emphasis added).

This provision is identical to the former one contained in Section 39.111(7)(d), Florida Statutes (1989), and demonstrates the legislature's intent that each and every finding be in a written order.

2) The legislature's use of the term "in writing" is self-explanatory. The legislature's use of the term "such order" is further evidence of its intent that the findings be in written form.

3) The legislature's choice of the term "render" is most telling. This legal term has a particular meaning which requires a written document, because rendition of an order is defined as:

> the filing of a signed, written order with the clerk of the lower tribunal.

Fla. R. App. P. 9.020(g). Without a written order, there is nothing to appeal. Billie v. State, 473 So.2d 34 (Fla. 2nd DCA 1985). If the legislature had used the term "recite" or "make" or "enter," then appellant might agree the findings could be oral in part. But that is not the case here, due to the legislature's choice of the term "render."

4) Moreover, compare the above statutes with the one on habitual offender sentencing:

> Each of the findings required as the basis for such sentence shall be found to exist by a preponderance of the evidence and shall be appealable to the extent normally applicable to similar findings.

Section 774.084(3)(d), Florida Statutes (1991). Here the legislature did not use the terms "in writing" or "render" or "such order," and so the statute has been construed to allow oral findings. Parker v. State, 546 So.2d 727, 728-29 (Fla. 1989):

> Parker argues that "almost every Florida scheme permitting extraordinary sentencing requires findings of fact and reasons justifying the sentence to be in writing." In this regard, he relies on our decisions and the applicable statute or rule which require written findings to (1) justify the death sentence, (2) sentence a juvenile as an adult, and (3) impose a sentence which departs from the prescribed sentencing guidelines. Parker argues that the same rule should apply to habitual offender sentencing. We disagree. The applicable statute or rule in the three instances relied on by Parker specifically requires the underlying reasons for the sentence to be in writing. To the contrary, section 774.084 contains no such requirement. (footnotes omitted; emphasis added).

5) Similarly, the legislature has required that reasons for departure for the guidelines be in written form:

> The sentencing guidelines shall provide that any sentences imposed outside the range recommended by the guidelines be explained in writing by the trial judge.

Section 921.001(6), Florida Statutes. This requirement is mandatory, and oral reasons do not satisfy the statute. Pope v. State, 561 So.2d 554 (Fla. 1990). The reasons for requiring a comprehensive written order are obvious -- the imposition of adult sanctions on a juvenile is a serious sentencing decision, and the judge must justify his decision in writing. These are the same policy reasons which moved the Supreme Court to require contemporaneous written departure orders in Ree v. State, 565 So.2d 1329, 1332 (Fla. 1990):

> We realize this procedure will involve some inconvenience for judges. However, a departure sentence is an extraordinary

> punishment that requires serious and thoughtful attention by the trial court.

Exposing a juvenile to the horrors of adult prison is also an "extraordinary punishment" which requires a "serious and thoughtful" written order addressing each statutory criteria.

6) Another reason for a written order was stated in State v. Rhoden, 448 So.2d 1013, 1016-17 (Fla. 1984):

> It is abundantly clear that the purpose of this legislation requiring the trial court to place in writing its findings of fact and reasons for imposing an adult sentence on a juvenile is to facilitate an intelligent appellate review of such a sentence.
>
> * * *
>
> The juvenile justice statutory scheme, as adopted by the Florida Legislature, grants to juveniles the right to be treated differently from adults. The legislature has emphatically mandated that trial judges not only consider the specific statutory criteria pertaining to the suitability of adult sanctions, but that they also reduce to writing their findings of fact and reasons for imposing an adult sentence on a juvenile. A written order is necessary in order to make effective the right of sentence review granted to juveniles by the legislature. See section 39.14, Florida Statutes (1981). This right of sentence review is not provided to adults. (emphasis in original).

Appellate review of the reasons for adult sanctions is not facilitated if this Court must comb the record of the sentencing hearing to determine if the judge orally addressed each and every criteria in the statute.

7) The majority has made the same mistake in the instant case that this Court did in the sentencing guidelines departure

case of Casteel v. State, 481 So.2d 72 (Fla. 1st DCA 1986). There this Court approved three out of five written reasons for departure. This Court looked beyond the written reasons and to the record and wrote a lengthy footnote with the facts of the crime. These facts, not recited by the judge in his written departure order, were used by this Court to find the "particular circumstances of the offenses," and "the heinous, repugnant manner of commission," id. at 74, and to justify affirmance.

The view that portions of the record not cited by the sentencing judge in his written order could be used to uphold the sentence was renounced by the Supreme Court:

> An appellate court must look only to the reasons for departure enumerated by the trial court and must not succumb to the temptation to formulate its own reasons to justify the departure sentence.

Casteel v. State, 498 So.2d 1249, 1252 (Fla. 1986). The same is true with regard to a written order imposing adult sanctions.

8) The majority distinguishes this Court's recent decision in Taylor v. State, 593 So.2d 1147 (Fla. 1st DCA 1992), which held that the written order must address all of the criteria, by saying:

> We conclude that a reading in pari materia of the sentencing transcript and the written order demonstrates sufficient, as opposed to rote, compliance with the requirements of section 39.059(7)(c).

Slip opinion at 4-5. Thus, the majority is saying that substantial compliance with the statute is all that is necessary, if the oral remarks and written order, when read together,

address each of the statutory criteria. But that is not what the statute says; its plain terms require the written order to address all criteria, without regard to what was aid at sentencing. The statutes requirements are clear, and this court has no power to rewrite it. State v. Barnes, 595 So.2d 22 (Fla. 1992).

9) The state in Taylor made the argument that the judge's brief two-paragraph written order should be affirmed because the supporting facts for his conclusions were to be found in the record:

> The State first submits that in finding that the juvenile system had been unsuccessful in rehabilitating appellant and that "the protection of the community requires adult disposition," the trial court clearly complied with the Section 39.111(7)(c)(1) requirement that it consider the "seriousness of the offense to the community and whether the protection of the community requires adult disposition." Likewise, the court, by referring to appellant's prior contacts with the juvenile system and by finding that the system had been unsuccessful in rehabilitating appellant, considered appellant's record and previous history as required by Section 39.111(7)(c)(5), as well as the prospects for adequate protection of the public and the likelihood of rehabilitation in the juvenile system as required by Section 39.111(7)(c)(6). All of these findings are supported by the record, which reflects appellant's numerous prior contacts with the legal system (R-171-172, 176-177) and his inability to reform.
>
> The State next contends that the trial court adequately considered appellant's sophistication and maturity as required by subsection (7)(c)(4).

> Again, the court in its order stated that appellant had previously been in the juvenile system, but that he had been unable to perform the restrictions imposed by community control. These findings, which are supported by the record, reflect a consideration by the court of appellant's emotional attitude and his pattern of living, and therefore his sophistication and maturity. Furthermore, although the court did not refer specifically to appellant's home or environmental situation, the record clearly reflects that appellant had an unstable home life and that he was a constant threat to his brothers and sisters (R-176).
>
> Finally, the State acknowledges that the trial court did not make specific findings about "[w]hether the offense was committed in an aggressive, violent, premeditated, willful manner," or whether the offense was committed against persons or property. Again, however, appellant was convicted in the instant case of two counts of extortion after he made malicious threats to his former girlfriend. Thus, due to the very nature of the crime appellant committed, the trial court necessarily considered whether the offense was aggressive, violent, premeditated, or willful, as required by subsection (7)(c)(2). Moreover, because extortion is always committed against persons rather than property, the trial court necessarily considered that the offense here was committed against a person. See Section 39.111(7)(c)(3), Fla.Stat. (1989). Accordingly, the trial court in its written order adequately considered each of the relevant criteria listed in Section 39.111(7)(c), and the sentence it imposed should be affirmed.

Answer Brief of Appellee, case no. 90-3505, at 9-11.

10) This Court in Taylor rejected the above argument when it held:

> Upon remand, the trial court must consider each of the six criteria listed in Section

> 39.111(7)(c), and reduce the decision to writing with specific findings of fact and reasons for imposing an adult sanction, in accordance with Section 39.111(7)(d).

593 So.2d at 1148. The dissent properly recognizes that Taylor is controlling authority. Accordingly,

> I express a belief, based on a reasoned and studied professional judgment, that the panel decision is contrary to the following decision of this court and that a consideration by the full court is necessary to maintain uniformity of decisions in this court: Taylor v. State, supra.

P. DOUGLAS BRINKMEYER

WHEREFORE, appellant requests that this Court grant rehearing or rehearing en banc and strictly construe the statute in the instant case.

Respectfully Submitted,

NANCY A. DANIELS
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

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Attorney for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by hand delivery to Wendy S. Morris, Assistant Attorney General, The Capitol, Tallahassee, Florida, this 6th day of August, 1992.

P. Douglas Brinkmeyer

P. DOUGLAS BRINKMEYER

Brinkmeyer APD

DISTRICT COURT OF APPEAL, FIRST DISTRICT

Tallahassee, Florida 32399
Telephone No. (904)488-6151

September 14, 1992

CASE NO: 92-00298

L.T. CASE NO. 91-213-CF

Antonio Troutman v. State of Florida

Appellant(s), Appellee(s).

ORDER

Motion for rehearing and motion for rehearing en banc, filed August 6, 1992, is DENIED.

JOANOS, CJ., AND ALLEN, J., concur.

ZEHMER, J., dissents.

Motion to dismiss appellant's motion for rehearing, filed August 17, 1992, is DENIED.

By order of the Court

Jon S. Wheeler
JON S. WHEELER
CLERK

I HEREBY CERTIFY that a true and correct copy of the above was mailed this date to the following:

P. Douglas Brinkmeyer

Wendy S. Morris

Sondra Joyner
Deputy Clerk

COURT OF APPEAL
STATE OF FLORIDA

SEP 14 1992

APPENDIX C