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IN THE SUPREME COURT OF FLORIDA

ANTONIO TROUTMAN,

Petitioner,

v. CASE NO. 80,495

STATE OF FLORIDA,

Respondent.

_____/

ON DISCRETIONARY REVIEW FROM
THE DISTRICT COURT OF APPEAL
FIRST DISTRICT OF FLORIDA

RESPONDENT'S BRIEF ON THE MERITS

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RESPONDENT'S BRIEF

PRELIMINARY STATEMENT

Petitioner, ANTONIO TROUTMAN, defendant below, will be referred to herein as "Petitioner." Respondent, the State of Florida, will be referred to herein as "the State." References to the record on appeal will be by the use of the symbol "R" followed by the appropriate page number(s). References to the transcripts of the sentencing hearing will be by the use of the symbol "T" followed by the appropriate page number(s).

STATEMENT OF THE CASE AND FACTS

The State accepts Petitioner's statement of the case and facts as reasonably accurate.

SUMMARY OF ARGUMENT

Section 39.059(7)(d), Florida Statutes (1991), does not require a trial court to place its reasons and findings in support of adult sanctions in writing. Rather, that provision requires only that the trial court place its "decision" in writing. Nevertheless, the trial court in the instant case placed both its decision and its findings in writing. These findings were cast in sufficient detail.

ARGUMENT

ISSUE

SECTION 39.059(7)(D), FLORIDA STATUTES, DOES NOT REQUIRE A TRIAL COURT TO PLACE ITS FINDINGS OF FACT INTO ITS WRITTEN ORDER FINDING A CHILD SUITABLE FOR ADULT SANCTIONS.

Section 39.059(7), Florida Statutes (1991), sets forth the procedure to be followed by a trial court in sentencing a juvenile as an adult. Section 39.059(7)(c) prescribes how the trial court should determine whether to sentence a juvenile as an adult, and Section 39.059(7)(d) directs the trial court to take certain actions upon concluding that a child is suitable for adult sanctions. Section 39.059(7)(c) provides as follows:

> 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. (Emphasis added).

Under Section 39.059(7)(c), then, the trial court shall reach its decision to sentence a child as either an adult or a child by "reference" to the six enumerated criteria. Webster's Third New International Dictionary 1907 (3rd ed. 1981), defines "reference" as: "Used or usable for reference: taken or laid down as a standard for measuring, reckoning, or constructing." Thus, the six criteria are a standard against which the trial court shall measure whether a juvenile is suitable for adult sanctions.

Upon consulting the six criteria and determining that a child is suited to adult sanctions, the trial court must follow Section 39.059(7)(d), which provides as follows:

> Any decision to impose adult sanctions shall be in writing and <u>in conformity with</u> each of the above 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).

In analyzing this provision, it requires the trial court to take three actions. First, the court must memorialize its decision to impose adult sanctions in writing. For example, the trial court must complete a written order, stating: "The Defendant, Antonio Troutman, is being sentenced as an adult." Second, the trial court's decision must be "in conformity with" the six criteria. Webster's Third New International Dictionary 477 (3rd ed. 1981), defines "conformity" as:

> **1 a:** correspondence in form, manner, or character; a point of resemblance (as of tastes) -- usu. used with "to" **b:** HARMONY, AGREEMENT, CONGRUITY -- usu. used with "with" <his behavior was in ~ with his ideals> **2:** the action or an act of conforming to something established (as law or fashion): COMPLIANCE, ACQUIESCENCE . . . .

Thus, the trial court's decision should harmonize with the six criteria in that the trial court shall sentence a child as an adult where the criteria show suitability. Third, the trial court must render a specific finding of fact and reasons supporting its decision on the record. §39.059(7)(d), Fla. Stat.

Petitioner contends that Section 39.059(7)(d) imposes a writing requirement not only as to the decision to impose adult sanctions, but also as to the "specific finding of fact." Petitioner's initial brief at 7. The State disagrees. The writing requirement of Section 39.059(7)(d) is contained in that provision's first sentence, which

requires only that the trial court's "decision" be in writing. The first sentence does not require that the reasons supporting the decision or that the specific finding of fact be in writing. The second sentence of Section 39.059(7)(d) requires that the trial court place its reasons and findings on the record. It contains no writing requirement. Thus, Section 39.059(7)(d) requires only that the "decision" be in writing.

Petitioner's analogy to the writing requirement for departures from the sentencing guidelines range is misplaced. Petitioner's initial brief at 11. Section 921.001(6), Florida Statutes, provides that:

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

Clearly, Section 921.001(6) requires that the "explanation" be in writing. However, the above language differs from Section 39.059(7)(d), in that Section 39.059(7)(d) does not require that the trial court's "explanation" i.e., its reasons and findings of fact be in writing. Under Section 39.059(7)(d), it is sufficient if the trial court places its reasons and findings on the record by stating them orally at the sentencing hearing.

Contrary to Petitioner's assertions, the language contained in Section 39.059(7)(d) is similar to the language

requiring findings in the habitual felony offender statute. Section 775.084(3), Florida Statues (1991), provides in part as follows:

> In a separate proceeding, the court shall determine if the defendant is a habitual felony offender or a habitual violent felony offender. The procedure shall be as follows:
>
> * * *
>
> (d) Each of the findings required as the basis for such sentence shall be found to exist by a preponderance of the evidence . . . .

As in Section 39.059(7)(d), the legislature did not require that the habitual offender findings be in writing.

In State v. Rhoden, 448 So. 2d 1013, 1015 (Fla. 1984), the trial court sentenced a juvenile as an adult without addressing in writing or orally the six criteria enumerated in Section 39.111(6)(c), Florida Statutes (1981).[1] This Court held that Section 39.111(6)(d) required that the trial court not only place its reasons on the record but that it reduce its findings to writing. Id. at 1016-1017. This Court remanded Rhoden's case for a second sentencing hearing. Id. at 1017.

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[1] Section 39.111(6)(c) & (d), Florida Statutes (1981), is the predecessor to Section 39.059(7)(c) & (d), Florida Statutes (1991). The two provisions are virtually identical to one another.

In Rhoden, the only argument advanced by the State was that Rhoden's failure to object to the trial court's failure to address each of the six criteria waived the issue for appellate review. Id. at 1015-1016. The State did not make the argument advanced here, i.e., that Section 39.111(6)(d) did not require the trial court to place its reasons and findings in writing, but that it required only that such reasons be placed on the record. Thus, Rhoden is not directly on-point. Section 39.059(7)(d), as the arguments presented in this brief show, does not require the findings to be in writing, but requires only that they be on the record.

Nonetheless, the trial court in the instant case committed both its decision and its reasons in support thereof to writing (R 26-27). In its opinion below, the First District found that the trial court properly addressed each criteria in writing. See Troutman v. State, 603 So. 2d 608 (Fla. 1st DCA 1992). In his brief before this Court, Petitioner does not contend otherwise or point to any specific criterion that was not addressed by the trial court. In its written order, the trial court addressed the statutory criteria as follows:

(1) The offenses were serious to the community -- As to this criterion, the trial court stated that the offense of false imprisonment "was extremely serious, given that the Defendant perpetrated the false imprisonment with the use of

a scissors, which could be considered a deadly weapon" (R 26).

(2) The offenses were committed in a premeditated and willful manner -- As to this criterion, the court stated that the offenses were committed "in a premeditated and willful manner" (R 26).

(3) These offenses were committed against a person -- The trial court noted that Petitioner's primary charge was false imprisonment (R 26), which by its statutory definition can only be committed against a person. See §787.02, Fla. Stat.

(4) The child is sophisticated and mature -- As to this criterion, the trial court remarked that "[t]he Defendant is just shy of his seventeenth birthday; however, he demonstrates a certain street sophistication beyond his chronological age" (R 26).

(5) The record and previous history of the child -- As to this criterion, the trial court stated that Petitioner "has only one prior contact with juvenile authorities, which was not a serious offense" (R 26).

(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 -- As to this criterion, the court stated: "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 . . . The imposition of juvenile sanctions are insufficient to impress upon the Defendant the seriousness of this type of action" (R 26-27).

Although the above-mentioned written reasons and findings were sufficient, the trial court made the following oral findings at the sentencing hearing:

> He [Petitioner] has no prior record, but I think this is a very serious case. I think in a lot of ways he's in the same situation as Mr. Hill. Mr. Hill has had more violent-type activities probably than Mr. Troutman has, but I'm concerned about the ability of juvenile sanctions in this case to impress upon Mr. Troutman the results of this type of action. So I am going to sentence him as an adult.

(T 8-9).

In State v. Rucker, 18 Fla. L. Weekly S93, S94 (Fla. Feb. 4, 1993), this Court held that, where a trial court failed to make a finding under the habitual felony offender statute as to whether the defendant's prior convictions had been pardoned or set aside, such error was harmless. This Court noted that determining whether the prior convictions had been pardoned or set aside was a "ministerial determination involving no subjective analysis." Id. at S94. Similarly, Section 39.059(7)(c)'s criteria three and five relating to whether the offense was against persons or

property and to the child's previous criminal history, respectively, are also ministerial determinations involving no subjective analysis. If this Court finds that the written order must not only contain the trial court's decision to impose adult sanctions but also must address each of the six criteria, any failure to address criteria three or five in writing should also be subject to harmless error analysis.

To remand for resentencing under the facts of this case, would be no more than "mere legal churning." Id. The record clearly shows that Petitioner's primary offense was committed against a person, Ms. Barker, who testified at the hearing (T 4-6). The record also shows and the trial court found both orally and in writing that Petitioner has no prior record (R 26-27; T 8-9). It should be noted that the actual sentence imposed was probation which only becomes a significant punishment if petitioner evidences a future refusal to follow the probationary conditions.

CONCLUSION

Based on the foregoing legal authorities and arguments, Respondent requests that this Honorable Court affirm Petitioner's conviction and sentence.

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 P. Douglas Brinkmeyer, Assistant Public Defender, Second Judicial Circuit, Leon County Courthouse, Fourth Floor North, 301 South Monroe Street, Tallahassee, FL 32301, this 29th day of March, 1993.

Wendy S. Morris
Assistant Attorney General