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8/27

AUG 5 1993

IN THE SUPREME COURT OF FLORIDA

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

CASE NO. 81,536

ANN BRANCH,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

ON PETITION FOR DISCRETIONARY REVIEW

RESPONDENT'S ANSWER BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

The Petitioner was the Appellee and the defendant, respectively, in the Fourth District Court of Appeal and in the trial court. Respondent, the State of Florida, was the appellant and the prosecution in the lower courts. In this brief, the parties will be referred to as they appear before this Honorable Court.

The symbol "A" will be used to refer to the opinion issued by the District Court of Appeal in this case, attached as Appendix to this brief.

STATEMENT OF THE CASE AND FACTS

The State accepts Petitioner's statement of the case and facts as it appears at pages two and three of her Brief on the Merits.

SUMMARY OF THE ARGUMENT

Point I - This case is controlled by this Court's decision in Scates v. State, 603 So. 2d 509 (Fla. 1992). As such, the sentence imposed by the trial court should have been affirmed by the District Court.

Point II - This case is controlled by this Court's decision in State v. Williams, 18 Fla. L. Weekly S371 (Fla. July 1, 1993). The State, however, submits that the matter should be remanded for refileing of the information as a solicitation charge.

ARGUMENT

POINT I

THE SENTENCE IMPOSED BY THE TRIAL COURT WAS PROPER UNDER THE MANDATE OF SCATES v. STATE, 603 So. 2d 504 (Fla. 1992).

At sentencing, the trial judge found Petitioner was a drug dependent amenable to rehabilitation pursuant to §397.12, Fla. Stat. (1989), and sentenced her to two and a half years of probation with drug evaluation and treatment. The trial judge did not impose the three (3) year mandatory minimum sentence specified in §893.13(1)(e)(1), Fla. Stat. (1989).

In Scates v. State, 603 So. 2d 504 (Fla. 1992), this Court held that "trial judges may refer a defendant convicted under section 893.13(1)(e)(1) to a drug abuse program pursuant to section 397.12 rather than impose a minimum three-year sentence." Id. at 506.

Pursuant to Scates, the District Court should have affirmed the sentence imposed by the trial court.

POINT II

THE CONVICTION ENTERED AGAINST
PETITIONER FOR PURCHASE OF
COCAINE WAS A VIOLATION OF
PETITIONER'S DUE PROCESS RIGHTS.

Although the issue was not raised before the Fourth District Court of Appeal, the trial court's order does state that the cocaine being sold by the undercover officer to Petitioner during a reverse sting operation was "crack which was manufactured from cocaine in the Broward Sheriff's Office Crime Laboratory." (R. 20)

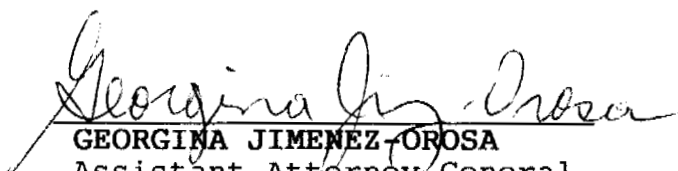
Faced with Grissett v. State, 594 So. 2d 321 (Fla. 4th DCA 1992), appeal dismissed, 599 So. 2d 1280 (Fla. 1992), and State v. Williams, 18 Fla. L. Weekly S371 (Fla. July 1, 1993), Respondent must agree that the charges of purchasing cocaine within 1,000 feet of a school must be dismissed. The State, however, submits that such dismissal should be without prejudice to the State to refile the information charging Petitioner with solicitation.

CONCLUSION

WHEREFORE, based on the foregoing reasons and authorities cited therein, Respondent agrees the opinion issued by the District Court of Appeal must be quashed on the authority of Scates v. State, 603 So. 2d 504 (Fla. 1992).

Respectfully submitted,

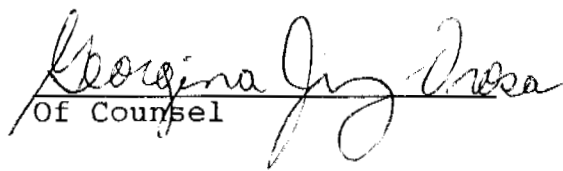
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing "Brief of Respondent on the Merits" has been furnished by courier to: ROBERT FRIEDMAN, Assistant Public Defender, Counsel for Petitioner, 6th Floor/Criminal Justice Bldg., 421 Third Street, West Palm Beach, FL 33401 this 3d day of August, 1993.


Of Counsel

IN THE SUPREME COURT OF FLORIDA

CASE NO. 81,536

ANN BRANCH,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

ON PETITION FOR DISCRETIONARY REVIEW

APPENDIX TO

RESPONDENT'S BRIEF ON THE MERITS

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Opinion filed by the District Court December 11, 1991

1/852-0

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
JULY TERM 1991

STATE OF FLORIDA,)
)
 Appellant,)
)
 v.)
)
 ANN BRANCH,)
)
 Appellee.)
 _____)

CASE NO. 91-1024.

Opinion filed December 11, 1991

Appeal from the circuit Court
for Broward County; Robert W.
Tyson, Jr., Judge.

Robert A. Butterworth, Attorney
General, Tallahassee, and Michelle
A. Smith, Assistant Attorney General,
West Palm Beach, for appellant.

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION
AND, IF FILED, DISPOSED OF.

Richard L. Jorandby, Public Defender,
and Robert Friedman, Assistant Public
Defender, West Palm Beach, for appellee.

PER CURIAM.

REVERSED on authority of State v. Baxter, 581 So.2d
939 (Fla. 4th DCA 1991); State v. Jenkins, 16 F.L.W. 2628 (4th
DCA Oct. 9, 1991).

DOWNEY, HERSEY and DELL, JJ., concur.

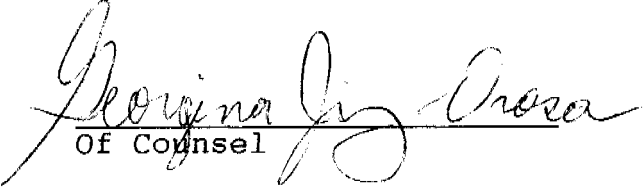
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DEC 11 1991

OFFICE OF
ATTORNEY GENERAL
WEST PALM BEACH, FLORIDA

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing "Appendix to Respondent's Brief on the Merits" has been furnished by courier to: ROBERT FRIEDMAN, Assistant Public Defender, Counsel for Petitioner, 6th Floor/Criminal Justice Bldg., 421 Third Street, West Palm Beach, FL 33401 this 3d day of August, 1993.


Of Counsel