IN THE SUPREME COURT OF FLORIDA

CASE NO. 83,845

SABRINA RAHMINGS,

Petitioner,

vs.

THE STATE OF FLORIDA,

Respondent.

ON APPLICATION FOR DISCRETIONARY REVIEW

BRIEF OF PETITIONER ON JURISDICTION

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INTRODUCTION

Petitioner, Sabrina Rahmings, was the appellant in the district court of appeal, and the defendant in the trial court. Respondent, the State of Florida, was the appellee in the district court of appeal, and the prosecution in the trial court. This brief refers to the parties as the "state" and the "defendant." The symbol "A." denotes the appendix to this brief, consisting of the opinion of the district court of appeal.

STATEMENT OF THE CASE AND FACTS

The petitioner, Sabrina Rahmings, was convicted after a jury trial. (A. 2). Prior to sentencing, the trial court agreed to grant her a furlough, but only after imposing a forty-year sentence which would be mitigated upon the defendant's return on the agreed-upon date. (A. 2). Ms. Rahmings did return as required. (A. 2). Later, a second furlough was granted on the same conditions. (A. 2). She returned from this second furlough, as well. An extension was granted. (A. 2). When Ms. Rahmings' case was called on the date she was to return from the extended second furlough, she was not in the courtroom. (A. 2). She was sentenced to forty years in prison, which was an upward departure from the range permitted by the sentencing guidelines. (A. 2). The written reason for departure given on her scoresheet was "waived guidelines to get furlough - failed to turn herself in." (A. 2).

On appeal, the defendant argued that the furlough arrangement could only be enforced within the limits of the guidelines, because it was not part of a plea bargain and under *Williams v. State*, 500 So. 2d 501 (Fla. 1986) and *Quarterman v. State*, 527 So. 2d 1380 (Fla. 1988), the failure to appear pursuant to a furlough agreement is not a valid reason to depart unless the furlough is an integral part of a plea bargain. It is the plea bargain which justifies departure, not the defendant's agreement to return pursuant to the conditions imposed by the court in granting a furlough. (A. 3).

The district court of appeal rejected that argument and held that failure to appear in accordance with a furlough arrangement entered into with the court is a valid reason to depart from the guidelines, regardless of whether the furlough is part of a plea bargain. In the court's words:

> [W]e read Quarterman as approving a departure sentence based upon the failure to appear, when the sentence is the result of a knowing and voluntary agreement entered into by the defendant and the

> court. Whether or not one of the elements of such a agreement is a guilty plea is not dispositive of the agreement's enforceability.

(A. 4).

While approving the enforcement of the furlough agreement, the court reversed and remanded for resentencing because the forty-year sentence was an impermissible general sentence (and exceeded the statutory maximum for at least one of the counts). (A. 5). This petition for discretionary review follows.

QUESTION PRESENTED

WHETHER THE DECISION IN THE INSTANT CASE EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF THIS COURT IN *WILLIAMS v. STATE*, 500 So. 2d 501 (FLA. 1986), AS CLARIFIED IN *QUARTERMAN v. STATE*, 527 So. 2d 1380 (FLA. 1988).

SUMMARY OF ARGUMENT

In *Williams v. State*, 500 So. 2d 501 (Fla. 1986), this Court held that a defendant's failure to appear after a furlough could not justify an upward departure from the sentencing guidelines, even if the defendant agreed or acquiesced to the conditions imposed by the court in granting the furlough. In *Quarterman v. State*, 527 So. 2d 1380, 1382 (Fla. 1988), this Court recognized an exception to that rule. Because a plea bargain can justify a departure sentence, a furlough agreement which is an "integral part" of a plea bargain can also justify departure. However, because it is the "the plea bargain itself" that serves as the clear and convincing reason for departure, where there is no plea bargain, or where, as in *Williams*, the furlough is not an integral part of the bargain, a departure cannot be based on the defendant's failure to appear. As distinguished and clarified in *Quarterman*, this Court's decision in *Williams* remains good law.

Here, there was no plea bargain. Ms. Rahmings was convicted after a jury trial. A departure sentence was imposed pursuant to a furlough agreement with the court. The Third District Court Appeal approved the departure sentence, holding that failure to appear will justify departure "when the sentence is the result of a knowing and voluntary agreement entered into by the defendant and the court," regardless of whether that agreement is part of a plea bargain. (A. 4). This holding is expressly and directly in conflict with the rule of law established in *Williams* and *Quarterman*.

ARGUMENT

THE DECISION IN THE INSTANT CASE EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF THIS COURT IN *WILLIAMS v. STATE*, 500 So. 2d 501 (FLA. 1986), AS CLARIFIED IN *QUARTERMAN v. STATE*, 527 So. 2d 1380 (FLA. 1988).

In *Williams v. State*, 500 So. 2d 501 (Fla. 1986), this Court held that a defendant's failure to appear after a furlough could not justify an upward departure from the sentencing guidelines, even if the defendant agreed or acquiesced to the conditions imposed by the court in granting the furlough. This is because a failure to appear is itself a criminal offense, and Florida Rule of Criminal Procedure 3.701(d)(1) prohibits departures based on offenses for which the defendant has not been convicted. If failure to appear could justify departure, the trial judge could circumvent the legislatively-established, five-year maximum for that offense, and impose without a trial whatever sentence the judge might arbitrarily choose. "Such a Kafkaesque situation," this Court said, "cannot be permitted." *Williams* at 503. However, there is an exception.

A plea bargain can constitute a valid reason for departure, *Holland v. State*, 508 So. 2d 5, 6 (Fla. 1987), and *Williams* should not be read to hold to the contrary. *Quarterman v. State*, 527 So. 2d 1380, 1382 (Fla. 1988). Rather, *Williams* stands for the following proposition:

> [A] defendant' failure to appear for sentencing in and of itself does not constitute a clear and convincing reason for departure from the sentencing guidelines, even when [a] defendant acquiesced in the conditions imposed by the trial court.

Quarterman, 527 So. 2d at 1382. Where a furlough agreement is "an integral part" of a valid plea bargain, "the plea bargain itself serves as a clear and convincing reason for departure," and therefore failure to appear in accordance with that agreement will justify a departure sentence. *Quarterman* at 1382. However, where,

as in *Williams* and here, the furlough is not part of a plea bargain, the defendant's failure to appear pursuant to furlough conditions imposed by the court cannot justify a departure sentence even when the defendant "agreed"[1] to those conditions. *See Williams*; *cf. Quarterman* at 1382; *see also, e.g., Payne v. State*, 624 So. 2d 815 (Fla. 4th DCA 1993); *Logue v. State*, 547 So. 2d 351 (Fla. 3d DCA 1989).

In the present case, the district court of appeal held that it does not matter whether a plea agreement is involved, all that matters is that the defendant "agreed" to the court's furlough arrangement. (A. 4). The district court stated:

> [W]e read Quarterman as approving a departure sentence based upon the failure to appear, when the sentence is the result of a knowing and voluntary agreement entered into by the defendant and the court. Whether or not one of the elements of such a agreement is a guilty plea is not dispositive of the agreement's enforceability.

(A. 4).

This is directly contrary to this Court's holding in *Williams*, as that holding was clarified in *Quarterman*, and is also contrary to *Quarterman*, despite the district court's purported reliance on that case. The whole point of *Quarterman* is that because a plea bargain is a valid basis for departure, the breach of a furlough agreement which is part of a plea bargain must likewise be a valid basis to depart. As this Court explained, unlike in *Williams*, in *Quarterman*,

> departure was not only based on Quarterman's failure to appear but was also based on the plea agreement itself. Further .... the conditions which Quarterman agreed to were not imposed after the plea bargain had been accepted, * * *, but were accepted as "an integral part of the bargain itself." * * * We agree with the court below that, under these circumstances, the plea bargain itself serves as a clear and convincing reason for departure and recede from any language in *Williams* to the contrary.

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[1]In both *Williams* and *Quarterman*, this Court noted that in Williams had "agreed" to the conditions of the furlough. *Williams* at 502; *Quarterman* at 1382.

Quarterman, 527 So. 2d at 1382 (citations omitted) (emphasis added). Contrary to the district court's opinion (A. 4), it is the existence of the "plea bargain itself" *Quarterman* at 1382, which justifies departure, not the defendant's agreement to the court's furlough conditions. Where, as here, there was no plea bargain, it is manifestly impossible for the "plea bargain itself" to be the basis for departure, and the policy reason for permitting such departures, namely, the encouragement of plea bargains, *see Bell v. State*, 453 So. 2d 478, 480 (Fla. 2d DCA 1984), does not exist. Under *Quarterman* and *Williams*, it is still the law that a defendant's agreement to court-imposed conditions of post-trial release cannot justify a departure. *Williams*; *Quarterman* at 1382. The district court of appeal's decision in this case is in express and direct conflict with that rule of law.

Furlough agreements of the type exemplified by this case are frequent occurrences in the criminal courts. They regularly lead to arbitrary sentences which not only spectacularly exceed the guidelines range, but are also imposed without any meaningful exercise of sentencing discretion. Under these furlough agreements--in which the defendant "waives guidelines to get furlough" and receives a departure sentence--the judge may impose a sanction for failure to appear which exceeds by several multiples the maximum sentence established by the legislature for that offense. Moreover, since the purpose is to ensure the defendant's return, the sentence imposed reflects, not a sentencing decision, but a post-trial release decision, and often has no relation to the sentence that would be appropriate for the underlying offense. This Court should grant review.

CONCLUSION

Based upon the foregoing argument and authorities, petitioner requests this Court to grant review.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was forwarded by mail to the Office of the Attorney General, PAULETTE R. TAYLOR, 401 N.W. 14th Street, Miami, Florida 33101 this 15th day of June, 1994.

Louis Campbell
LOUIS CAMPBELL
Assistant Public Defender

IN THE SUPREME COURT OF FLORIDA

CASE NO.

SABRINA RAHMINGS,

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FROM THE DISTRICT COURT OF APPEAL OF
FLORIDA, THIRD DISTRICT

APPENDIX

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

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

THIRD DISTRICT

JANUARY TERM, 1994

SABRINA RAHMINGS,	**	
Appellant,	**	
vs.	**	CASE NO. 93-983
THE STATE OF FLORIDA,	**	
Appellee.	**	

Opinion filed May 10, 1994.

An Appeal from the Circuit Court of Dade County, Robbie M. Barr, Judge.

Bennett H. Brummer, Public Defender, and Louis Campbell, Assistant Public Defender, for appellant.

Robert A. Butterworth, Attorney General, and Paulette R. Taylor, Assistant Attorney General, for appellee.

Before SCHWARTZ, C.J., and JORGENSON and LEVY, JJ.

LEVY, Judge.

Sabrina Rahmings, the defendant, appeals her upward departure sentence, which was imposed after she breached a presentencing furlough agreement. We affirm in part, reverse in part, and remand.

After a jury trial, the defendant was convicted of two counts of armed robbery, one count of aggravated battery, and one count of burglary. The defendant sought a furlough prior to sentencing in order to tend to some personal matters. The trial judge agreed to furlough the defendant, but only after imposing a 40-year sentence which would be mitigated upon the defendant's return on the agreed upon date. The defendant took the stand and testified that she understood the agreement, and would appear as required. The defendant was released, and subsequently returned as required. A second furlough was later granted on the same conditions, and the defendant again returned as required. Upon her return from the second furlough, the defendant requested an extension of the furlough, which was also granted on the same conditions.

The defendant failed to return as required from this extension of her second furlough. She was not present in the courtroom when her case was called, nor when it was again called at the end of the trial court's calendar. After a search of the ladies' room and the area adjacent to the courtroom failed to locate her, she was sentenced to 40 years pursuant to the agreement. Since 40 years constituted an upward departure sentence, the written reason for departure given on her scoresheet was "waived guidelines to get furlough - failed to turn herself in." The defendant is currently incarcerated under this sentence, and now appeals.

In Quarterman v. State, 527 So. 2d 1380 (Fla. 1988), the Supreme Court approved using a defendant's failure to appear after an agreed-upon furlough as a justification for an upward departure

sentence. Quarterman, 527 So. 2d at 1382. There is no question that the defendant in this case knowingly and voluntarily entered into the furlough agreement with the court. Having clearly breached the agreement, the trial court properly sentenced the defendant pursuant to its terms. See Harris v. State, 608 So. 2d 898 (Fla. 3d DCA 1992).

The defendant, however, attempts to distinguish Quarterman, and contends that her sentence must be reversed based upon Williams v. State, 500 So. 2d 501 (Fla. 1986), and our holding in Harris v. State, 524 So. 2d 1104 (Fla. 3d DCA 1988), which relied upon Williams. Williams and Harris each stood for the proposition that a defendant's failure to appear in court could not itself justify an upward departure sentence, even if the failure to appear constituted the breach of a furlough agreement. Williams, 500 So. 2d at 503; Harris, 524 So. 2d at 1104. Williams, however, was expressly receded from in Quarterman. Quarterman, 527 So. 2d at 1382. We consider this an implicit overruling of our Harris (524 So. 2d 1104) decision.

In attempting to distinguish Quarterman, the defendant points out that the furlough agreement in Quarterman had been entered as part of a plea bargain in that case. Hence, the defendant contends, Quarterman receded from Williams only as to those situations where a furlough agreement is part of a negotiated plea bargain. Therefore, since she was convicted after a jury trial, and not as the result of a plea bargain, Quarterman is inapplicable and Williams controls. We disagree.

The rationale of Quarterman focused not on the fact that a guilty plea had been entered, but on the existence of an agreement between the defendant and the court. As pointed out in Quarterman, the conditions of the furlough "were accepted as 'an integral part of the bargain itself.'" Quarterman, 527 So. 2d at 1382 (quoting Williams, 506 So. 2d at 51). Clearly, it was the knowing and voluntary nature of the agreement which justified its use as a reason for the departure sentence. See also White v. State, 531 So. 2d 711, 714 (Fla. 1988)(where defendant voluntarily pleads guilty, and agreed-to sentencing range constitutes an upward departure, sentence was properly imposed); Smith v. State, 529 So. 2d 1106, 1107 (Fla. 1988)(approving upward departure sentence based upon plea bargain, where bargain had been knowingly and voluntarily entered after consultation with counsel); Jacobs v. State, 522 So. 2d 540, 541 (Fla. 3d DCA)(upward departure sentence proper as part of negotiated plea), rev. denied, 531 So. 2d 1353 (Fla. 1988). Consequently, we read Quarterman as approving a departure sentence based upon the failure to appear, when the sentence is the result of a knowing and voluntary agreement entered into by the defendant and the court. Whether or not one of the elements of such an agreement is a guilty plea is not dispositive of the agreement's enforceability.

Were we to only enforce furlough agreements when entered as part of a plea bargain, trial courts would rarely, if ever, grant a furlough to a defendant who had been convicted by a jury. In effect, we would be penalizing defendants who had exercised their right to a jury trial, by severely curtailing their opportunity

for a presentencing furlough. Additionally, we would be creating an incentive for defendants to forego jury trials, a result we deem improper.

Today's ruling does not conflict with our holding in Logue v. State, 547 So. 2d 351 (Fla. 3d DCA 1989). In Logue, we reversed a sentence entered after a defendant failed to return from a furlough. The opinion recited that "the trial judge told the defendant that he would be sentenced to fifty-six years, which would be mitigated to twelve years if he returned for sentencing after a furlough." Logue, 547 So. 2d at 352 (emphasis added). Since the sentence in Logue was given at the trial judge's direction, and not as part of a knowing and voluntary agreement by the defendant, it was properly reversed, and is consistent with today's ruling.

Although we approve enforcement of the furlough agreement in this case, resentencing is nevertheless necessary because the defendant improperly received a general sentence, instead of being sentenced individually as to each count. See Johnson v. State, 624 So. 2d 807 (Fla. 3d DCA 1993). In resentencing the defendant in accordance with the breached furlough agreement, the trial court should be cognizant of the statutory maximums for each of the offenses. See §§ 784.045(2), 775.082(3)(c), Fla. Stat. (1991).

Affirmed in part, reversed in part, and remanded.