

IN THE SUPREME COURT OF FLORIDA

CASE NO. 86,082

BOBBY GLENN WASHINGTON,

Petitioner,

vs

STATE OF FLORIDA,

Respondent.

FILED

SID J. WHITE

SEP 15 1995

CLERK, SUPREME COURT

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Chief Deputy Clerk

RESPONDENT'S BRIEF OF THE MERITS

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PRELIMINARY TATEMENT

Petitioner was the defendant at trial and the appellant in the Fourth District Court of Appeal. Respondent was the prosecution and the appellee.

In the brief, the parties will be referred to as they appear before this Honorable Court, except that Respondent might **also** be referred to as the "State."

The following symbols will be used:

"R" Record on appeal and sentencing transcript
"T" Transcript of April 29, 1994 hearing

STATEMENT OF THE CASE AND FACTS

Respondent accepts Petitioner's Statement of the Case and Facts, but makes the following additions:

1. The prior appeal was a result of the trial court's denial of Petitioner's motion to correct and/or mitigate sentence (R 90-92, 173-179). In that motion, Petitioner asked to be sentenced within the guidelines (R 91-92). Petitioner's permitted guidelines sentencing range is five and a half to nine years imprisonment (T 25, 30, 39).

2. The Fourth District reversed the trial court's denial, "...reverse those portions of Appellant's sentencing orders adjudicating him a habitual offender" (R 235).

3. The resentencing hearing was on Petitioner's motion to enforce mandate (T 7, R 192-208), 239). The prosecutor contended that the mandate simply required that the habitual offender should be stricken (T 36-37).

4. The Fourth District relied on its earlier decision in this case, Washington v. State, 631 So.2d 367 (Fla. 4th DCA 1994), in affirming the guidelines sentence entered on remand (Petitioner's Appendix).

SUMMARY OF ARGUMENT

The trial court properly refused to allow Petitioner to withdraw his plea after remand from the District Court. It accurately interpreted the Fourth District's mandate. That mandate, permitting the guidelines sentence on remand, was not only contemplated by the plea form, but was initially requested by Petitioner.

ARGUMENT

**THE TRIAL COURT PROPERLY REFUSED TO
ALLOW PETITIONER TO WITHDRAW HIS PLEA
AFTER REMAND FROM THE DISTRICT COURT.**

The State submits that the instant case is unlike State v. Wilson, 20 Fla.L.Weekly s313 (Fla. July 6, 1995), for the only issue presented to the trial court on remand, and then to the Fourth District on appeal from resentencing, was the nature of the Fourth District's mandate and whether it was followed. Obviously, the Fourth District must have contemplated resentencing within the guidelines when it entered the mandate, for it relied on its earlier decision in Washington v. State, 631 So.2d 367 (Fla. 4th DCA 1994), to support its ruling in the instant appeal. Hence, the trial court did not err in interpreting the Fourth District's mandate as it did when it ruled on Petitioner's motion to enforce mandate.

Also, unlike in Wilson, the State in this case argued at resentencing that the mandate simply called for habitualization to be stricken, resulting in the guidelines sentence. In other words, the State herein does not feel prejudiced by Petitioner's original unilateral request that his sentence be within the guidelines (R 91-92). Furthermore, since Petitioner originally requested a guidelines sentence in his motion to correct/mitigate sentence (R 91-92) and since the plea form anticipated a sentence up to fifteen years imprisonment (R 38), the guidelines sentence conforms with Petitioner's plea. Accordingly, Appellant was not

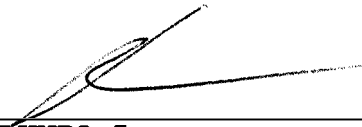
only aware of the possibility of the instant guidelines sentence,
but actually asked for it (R 91-92).

CONCLUSION

Based upon the foregoing arguments and authorities, Respondent respectfully requests this Court to AFFIRM the decision of the District Court.

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 courier to: **CHERRY GRANT, ESQUIRE**, Assistant Public Defender, The Criminal Justice Building, 421 Third Street, 6th Floor, West Palm Beach, Florida 33401 this 12th day of September, 1995.



Of Counsel

/mmc