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IN THE SUPREME COURT OF FLORIDA

FILED
SID J. WHITE
MAY 8 1996
CLERK, SUPREME COURT
By ______ Chief Deputy Clerk

STATE OF FLORIDA,	)	
Petitioner,	)	
versus	)	S.CT CASE NO. 87,551
BENNIE TROUTMAN,	)	DCA CASE NO. 95-1176
Respondent.	)	

ON DISCRETIONARY REVIEW FROM THE FIFTH DISTRICT COURT OF APPEAL

RESPONDENT'S BRIEF ON THE MERITS

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

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STATEMENT OF THE CASE AND FACTS

Respondent, Bennie Troutman, accepts the statement of case and facts contained in the petitioner's brief.

SUMMARY OF THE ARGUMENT

There is no conflict between Fla. Stat. §922.051 and the sentencing guidelines. Thus there is no need to resolve the conflict in favor of the guidelines, as the petitioner argues.

Since §922.051 prohibits sentencing a defendant to more than one year in county jail when the defendant is being sentenced on a felony, the District Court's holding in this case was correct, and should be affirmed.

POINT

A DEFENDANT, CONVICTED OF BOTH FELONIES AND MISDEMEANORS, SHOULD NOT BE SENTENCED TO MORE THAN ONE YEAR IN COUNTY JAIL.

The Petitioner first argues that this Court, by its interpretation of Fla. Stat. §922.051 in Singleton v. State, 554 So.2d 1162 (Fla. 1990) and subsequent cases, has created a conflict between section 922.051 and the sentencing guidelines statute, Section 921.0014, Florida Statutes (1993). Petitioner argues that Section 922.051, which prohibits cumulative terms of more than one year in county jail "when a statute expressly directs that imprisonment be in a state prison" should be reinterpreted in light of the guidelines.

Petitioner argues that since, under the guidelines, felons may be sentenced to county jail, community control or probation, Section 922.051 should no longer be applied to noncapital felonies or felonies which do not carry mandatory minimum prison sentences. Petitioner relies on McKendry v. State, 641 So.2d 45 (Fla. 1994) to argue that when two statutes conflict, the later statute should prevail. The problem with this is that there is no conflict between §922.051 and §921.0014.

It was not the guideline statute, in any of its incarnations, which allowed jail sentences for felonies. Section 922.051 itself is a statute which authorizes county jail sentencing for felony offenses. The fact that the guidelines sometimes recommend sentences of less severity than state prison

for felonies does not create a conflict with a statute that allows county jail terms of up to one year for a felony offense.

Petitioner argues that the existence of the sentencing guidelines make this Court's interpretation of §922.051 in Singleton incorrect. Interpreting §921.051 as applying to felonies as defined by Fla. Stat. §775.082 was a legitimate holding prior to the guidelines and remained a legitimate holding at the time of the Singleton decision.

Petitioner next argues that even if this Court finds that §921.051 refers to all felonies, consecutive county jail sentences for a felony and misdemeanors are proper. Section 921.051 is clear on this question. When a defendant is being sentenced for a felony, a cumulative sentence of more than one year in county jail is improper. This is true regardless of whether misdemeanors or felonies extend the jail term beyond one year. The Fifth District Court was correct in holding this way in Locke v. State, 656 So.2d 571 (Fla. 5th.DCA 1995), and this case Troutman v. State, 668 So.2d 340 (Fla. 5th.DCA 1996).

The anomaly pointed out in Armstrong v. State, 656 So.2d 455 (Fla. 1995), that a defendant sentenced for misdemeanors may receive more jail time than a defendant sentenced for felonies and misdemeanors, should not be used to increase the second defendant's sentence in violation of §921.051. This Court should answer the certified question by holding that Armstrong does not allow jail sentences to be stacked when a defendant is being sentenced for both felonies and misdemeanors.

CONCLUSION

BASED UPON the argument and authorities expressed herein, Respondent respectfully requests that this Honorable Court affirm the holding of the Fifth District Court of Appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon the Honorable Robert E. Butterworth, Attorney General, 444 Seabreeze Boulevard, Fifth Floor, Daytona Beach, Florida 32118, in his basket at the Fifth District Court of Appeal; and mailed to Bennie Troutman, 191 Hawk Street, Daytona Beach, Florida 32114, on this 6th day of May, 1996.

KENNETH WITTS
ASSISTANT PUBLIC DEFENDER