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IN THE SUPREME COURT OF FLORIDA

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✓ DEC 9 1996

CLERK, SUPREME COURT

By \_\_\_\_\_  
Chief Deputy Clerk

STATE OF FLORIDA,

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Petitioner,

:

v.

:

CASE NO. 88,451

EUGENE EVANS,

:

Respondent.

:

\_\_\_\_\_

RESPONDENT'S BRIEF ON THE MERITS

NANCY A. DANIELS  
PUBLIC DEFENDER  
SECOND JUDICIAL CIRCUIT

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STATE OF FLORIDA, :  
Petitioner, :  
v. : CASE NO. 88,451  
EUGENE EVANS, :  
Respondent, :  

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RESPONDENT'S BRIEF ON THE MERITS

PRELIMINARY STATEMENT

Respondent was the defendant in the trial court and the Appellant, below, and will be referenced as "Respondent" or "Mr. Evans" in the following brief. The record on appeal will be referenced by "R", followed by the appropriate page number in parenthesis. The transcript of trial proceedings will be referenced by "T." The supplemental transcript of the hearing ordered by the First District Court of Appeals will be referenced by "ST." The trial judge was the Honorable PAUL BRYAN.

STATEMENT OF THE CASE AND FACTS

Respondent accepts Petitioner's Statement of the Case and Facts.

## JURISDICTIONAL STATEMENT

This Court lacks conflict jurisdiction pursuant to Article V, Section 3(b)(3), of the Florida Constitution because this case does not conflict with the Fifth District's decision in San Martin v. State, 591 So. 2d 301 (Fla. 2d DCA 1991), *rev. denied*, 598 So. 2d 78 (Fla. 1992)<sup>1</sup>. While the aforementioned case may "appear" to conflict with the holding of Evans v. State, 21 Fla. L. Weekly D1444 (Fla. 1st DCA June 18, 1996), the differing outcomes were actually mandated by differing factual patterns. In fact, both cases conform with this Court's holding in Ree v. State, 565 So. 2d 1329 (Fla. 1990).

In San Martin, the written reasons supporting the departure sentence were actually signed by the presiding judge and filed with the clerk of the court in conformance with the holding in Ree. In Evans, the written reasons supporting the departure were not filed prior to Respondent's notice of appeal, nor were they ever signed by the presiding judge. Applying this Court's holding in Ree, the error which occurred in San Martin did not prejudice the defendant because he was not denied access to the trial court's written reasons to perfect his appeal. The error which occurred in Evans, on the other hand, denied Respondent the

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<sup>1</sup>While the undersigned counsel conceded jurisdiction in the Jurisdictional Brief of Respondent based upon an apparent conflict between these cases, further analysis has forced the undersigned to take a contrary position in this brief.

benefit of the Court's written reasons in perfecting his appeal. Because Respondent was precluded from appealing the validity of the sentencing court's written reasons for imposing the departure sentence, the error constitutes a violation of this Court's holding in Ree. Because the holdings of these cases do not expressly and directly conflict, this Court lacks jurisdiction to hear this cause.

## SUMMARY OF THE ARGUMENT

The First District Court of Appeals correctly ruled that failure to file signed, written reasons in support of the guidelines departure sentence constituted a violation of Section 921.0016(1)(c), Florida Statutes (1993), Rule 3.702(d)(18), Florida Rule of Criminal Procedure (1993), and of this Court's holding in Ree v. State, 565 So. 2d 1329 (Fla. 1990), thereby mandating a new sentence in conformance with the guidelines. Whether blame for the failure may be assigned to the trial court, the clerk of the court or to the probation and parole office is irrelevant to a determination of the issue before this Court. Rather, the fact that Respondent was denied the benefit of the trial court's written reasons in perfecting his appeal requires that the departure sentence be reversed and a guideline sentence be imposed in its place. See State v. Lyles, 576 So. 2d 706 (Fla. 1991); State v. Colbert, 660 So. 2d 701 (Fla. 1995).



## ARGUMENT

WHETHER RESPONDENT WAS PREJUDICED BY THE TRIAL COURT'S FAILURE TO "FILE" SIGNED, WRITTEN REASONS SUPPORTING THE DEPARTURE SENTENCE WITH THE CLERK OF THE COURT ON THE DAY OF SENTENCING.

Respondent submits there are two procedural requirements mandated by Ree. The first is that the trial court must reduce to writing its departure reasons, at the time of sentencing. The second requirement is that the written reasons must be made available to the defendant so that he may consider them in perfecting his appeal.

Petitioner insists there is no Ree violation because Judge Bryan memorialized his departure reasons at the time of sentencing. As long as this is done, she continues, the rule of law has been upheld because the act of filing the written reasons is purely ministerial in nature. See Petitioner's Initial Brief on the Merits, p. 19. To support this proposition, she relies on a single line from Lyles<sup>2</sup>. Petitioner's reliance on Lyles is misplaced. While a single day's delay was deemed not to have prejudiced Lyles, this Court unequivocally asserted the necessity of actually filing the written reasons in a timely fashion, in Lyles. The purpose of this requirement is to provide the defendant with the necessary means to appeal the court's ruling,

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<sup>2</sup>"The ministerial act of filing the written reasons with the clerk on the next business day does not, in our view, prejudice the defendant in any respect."

as follows:

[2] Written reasons must be issued on the same day as sentencing. It is important to recognize that, if a sentence is entered and filed with the clerk on the day of sentencing, but the written reasons are delayed in being prepared and consequently are not filed on the same date, the decision to appeal may have to be made without the benefit of those written reasons because the time for appeal begins to run from the date the sentencing judgment is filed, not the written reasons. This is the reason for our holding in Ree.

576 So. 2d at 708. Judge Bryan's departure sentence fails to meet this second requirement of Ree. While he reduced his reasons to written form at the sentencing hearing, they were not made available to Respondent, because they were not filed until months later.

Petitioner ignores the clear holding of Lyles, and argues this second requirement does not exist. "It is one matter to hold the trial court responsible for failing to comply with legal precedent requiring written reasons, it is quite another to hold a trial court responsible for a [sic] such technicalities as misfiling." See Petitioner's Initial Brief on the Merits, p. 24. This Court has already considered Petitioner's arguments and, unanimously, rejected them. In Colbert, this Court said:

While some may question the wisdom of Ree, we find no reason to second-guess that decision today. Our holding in Ree was the logical extension of our earlier decisions in State v. Jackson, 479 So. 2d 1054 (Fla. 1985), and State v. Oden, 478 So. 2d 51 (Fla. 1985).

The arguments the State asserts were well understood at the time of the *Ree* decision. As later explained in *State v. Lyles*, 576 So. 2d 706 (Fla. 1991), *Ree* was intended to address the concern that if written reasons for departure are not promptly filed, the decision to appeal might have to be made without the benefit of those reasons. There have been no intervening circumstances dictating that we should abruptly reject the position we unanimously adopted in *Ree*. Furthermore, section 921.0016(1)(c), Florida Statutes (1993), and Florida Rule of Criminal Procedure 3.702(d)(18) now relax the requirements of *Ree* for crimes committed prior to that date. [footnote omitted] We find no reasons to overrule *Ree* for crimes committed prior to that date. [footnote omitted]

660 So. 2d at 702. Explaining he was one of those who had some questions, in the concurring opinion, Justice Wells said:

However, since section 921.0016(1)(c) and rule 3.702(d)(18) now allow fifteen days in which to file the written reasons for departure, I believe to answer the certified question differently than the answer given by the majority would cause more confusion in what has been too unsettled for too long.

*Id.*, at 703. Hence, Petitioner's entire argument is outdated.

This Court's holding in *Ree* determined that a departure from the guidelines was so prejudicial to the rights of a defendant that due process dictated strict adherence with the procedures adopted for that purpose. See *Troutman v State*, 630 So. 2d 528 (Fla. 1983) (statutory safeguards must be strictly maintained when trial judges treat individuals substantially more severely than is customary). Moreover, the new, 15-day filing requirement

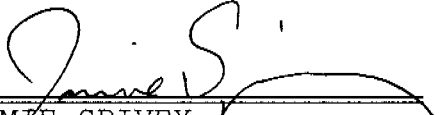
vitiates any concern over sentencing windfalls resulting from technical violations of the rule. Now, there is no excuse for not insisting the written reasons be filed in a timely manner. Of course, the trial court, below, failed to meet even this relaxed standard. Hence, this Court must affirm the First District's decision and remand for a guideline sentence. This is no time to digress, now, that we have a bright-line rule which is fair to everyone. Mr. Evans does not gain a windfall, thereby; but rather, the system retains its integrity.

CONCLUSION

Based on the foregoing reasoning, caselaw and other citation of authority, Respondent requests this Honorable Court affirm the decision of the First District Court of Appeal.

Respectfully submitted,

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ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to Charmaine Millsaps, Assistant Attorney General, by delivery to The Capitol, Criminal Appeals Division, Plaza Level, Tallahassee, Florida, 32301, and a copy has been mailed to respondent, on this 9 day of December, 1996..

  
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JAMIE SPIVEY