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IN THE SUPREME COURT OF FLORIDA

DEC 17 1997

CLERK SUPREME COURT  
By BAR  
Chief Deputy Clerk

DENO S. GREEN, )  
)  
Petitioner, )  
)  
vs. )  
)  
STATE OF FLORIDA, )  
)  
Respondent. )  
\_\_\_\_\_ )

CASE NO. 90,696

**ON DISCRETIONARY REVIEW FROM  
THE FIFTH DISTRICT COURT OF APPEAL**

**PETITIONER'S REPLY BRIEF**

JAMES B. GIBSON  
PUBLIC DEFENDER  
SEVENTH JUDICIAL CIRCUIT

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## TABLE OF CITATIONS

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#### CASES CITED:

##### Browning v. State

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##### Bush v. State

687 So. 2d 312 (Fla. 1st DCA 1997)

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##### Peterson v. State

651 So. 2d 781 (Fla. 4th DCA 1995), rev'd 667 So.2d 199 (Fla. 1996)

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##### Smith v. State

632 So.2d 95 (Fla. 2d DCA 1994) dismissed 639 So.2d 981 (Fla. 1994)

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##### Thornton v. State

683 So. 2d 515 (Fla. 2d DCA 1996)

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#### OTHER AUTHORITIES CITED:

Section 775.082, Florida Statutes

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Section 775.083, Florida Statutes

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Section 775.084, Florida Statutes

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Section 775.082(3)(d), Florida Statutes

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Section 777.04(4)(a), Florida Statutes

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Section 782.07 (1), Florida Statutes

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Section 921.001(5), Florida Statutes

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Rule 3.703, Florida Rules of Criminal Procedure

2,3

IN THE SUPREME COURT OF FLORIDA

DENO S. GREEN, )  
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 Petitioner, )  
 )  
 vs. )  
 )  
 STATE OF FLORIDA, )  
 )  
 Respondent. )  
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CASE NO. 90,696

SUMMARY OF ARGUMENT

Because of the broad discretion of the trial court, the numerous statutes and rules involved, and the necessity for decisions based upon the law, it is virtually impossible for a criminal accused to navigate the maze of sentencing guidelines issues and accurately determine his potential sentence by performing mere arithmetical calculations.

## ARGUMENT

The State suggests that a criminal accused can determine his potential sentence by preparing a guidelines scoresheet and considering all statutes relevant to his offense, including section 921.001(5). Petitioner respectfully disagrees.

Because of the broad discretion of the trial court, the numerous statutes and rules involved, and the necessity for decisions based upon the law, it is virtually impossible for a criminal accused to accurately navigate the maze of sentencing guidelines issues and accurately determine his potential sentence by performing mere arithmetical calculations. As an illustration, to determine his potential sentence, petitioner, who was convicted of attempted voluntary manslaughter, must begin his journey with chapter 782. Section 782.07(1) advises that the killing of a human being by culpable negligence is a second degree felony punishable as provided in sections 775.082, 775.083, or 775.084. But, petitioner did not kill his victim, so, assuming that he can find the appropriate statute, he arrives at section 777.04(4)(a) which advises that an attempt is ranked one level below the offense attempted. Now petitioner knows that he has been convicted of a third degree felony and that he must read sections 775.082, 775.083, 775.084. Section 775.082(3)(d) tells the petitioner that a conviction for a third degree felony is punishable by a term of years not exceeding five years and a fine of \$5,000, unless he is classified as an habitual felony or habitual violent felony offender. In none of these statutes is petitioner referred to chapter 921; however, since every defendant is presumed to know the law, petitioner wanders on to chapter 921 and locates the guidelines scoresheet and Rule 3.703, Florida Rules of Criminal Procedure.

After locating chapter 921, to properly calculate a guidelines sentence, the accused must review both chapter 921 and Rule 3.703, Florida Rules of Criminal Procedure. He must determine the primary offense, additional offenses, prior record, victim injury points, legal constraint points, and points for the use of a firearm. Judging by the number of appellate opinions concerning scoresheets, it appears that the proper calculation of a scoresheet is often beyond the skills of three highly trained attorneys -- the trial judge, the prosecutor, and the defense attorney. See, e.g., Smith v. State, 632 So. 2d 95 (Fla. 2d DCA 1994), dismissed 639 So. 2d 981 (Fla. 1994) (counts upon which the court sentences defendant as an habitual offender cannot be scored as additional offenses); Browning v. State, 625 So. 2d 960 (Fla. 5th DCA 1993) (being on bond in another case is not legal constraint); Bush v. State, 687 So. 2d 312 (Fla. 1st DCA 1997) (court erred by assessing points for use of firearm where crime is an enumerated offense); Thornton v. State, 683 So. 2d 515 (Fla. 2d DCA 1996) (prior capital offense not scoreable as prior record). Even appellate court judges are not immune from scoresheet errors. See, Peterson v. State, 651 So. 2d 781 (Fla. 4th DCA 1995), rev'd 667 So.2d 199 (Fla. 1996) (court erred in scoring convictions on appeal as prior record).

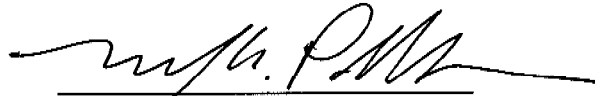
Given the broad discretion of trial court judges in sentencing and the number and frequency of scoresheet errors, petitioner respectfully suggests that an accurate arithmetical calculation by a criminal accused is impossible, and for these reasons coupled with the argument presented in the initial brief, he was denied due process of law in his sentence.

CONCLUSION

Based upon the authorities cited and the argument presented, this court should reverse the opinion of the Fifth District Court of Appeal with instructions to remand this matter for sentencing within the statutory maximum established in section 775.082, Florida Statutes.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been hand delivered to the Honorable Robert A. Butterworth, Attorney General, 444 Seabreeze Boulevard, 5th Floor, Daytona Beach, FL 32118 via his basket at the Fifth District Court of Appeal and mailed to Mr. Deno S. Green, P.O. Box 279, East Palatka, FL 32131, this 15th day of December, 1997.

Noel A. Pelella for  
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