IN THE SUPREME COURT OF FLORIDA

JONATHAN JEFFRIES,	)	
	)	
Petitioner,	)	
	)	CASE NO. 92,007
vs.	)	DCA CASE NO. 97-35
	)	
STATE OF FLORIDA,	)	
	)	
Respondent.	)	
_____	)	

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

PETITIONER'S BRIEF ON THE MERITS

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

NANCY RYAN
ASSISTANT PUBLIC DEFENDER
Florida Bar Number 765910
112 Orange Avenue, Suite A
Daytona Beach, Florida 32114
Phone: 904/252-3367

COUNSEL FOR PETITIONER

TABLE OF CONTENTS

TABLE OF CITATIONS

STATEMENT OF THE CASE AND FACTS

On September 4, 1996, the State Attorney for the Seventh Judicial Circuit (St. Johns County) filed an information in case no. CF96-1494 charging the petitioner with one count of robbery with a weapon (a BB gun). (R 1) The offense was alleged to have taken place on May 23, 1996; the information superseded a petition for delinquency filed in case no. CJA96-495. (R 1)

On October 23, 1996, the petitioner appeared with counsel before the trial judge, the Honorable Robert K. Mathis, Circuit Judge. (R 56-66) He entered a plea of no contest to the charged first-degree felony, with the agreement (a) that the State would recommend that his sentence in this case would run concurrently to a one-year sentence he was serving in Duval County and (b) that the State would not oppose the defense's "argument for youthful offender status." (R 58) The judge held a colloquy with the petitioner, who at the time of the plea hearing was sixteen years old. (R 58-65) During the colloquy Judge Mathis informed the petitioner that the maximum sentence for the first-degree felony he was charged with was thirty years in prison, and further informed him as follows:

> THE COURT: You may be considered for lesser sentencing. Your sentence will be based on the sentencing guidelines. There will be a score-sheet prepared in your case.

(R 59-60) The judge went on to ask the petitioner the following:

> THE COURT: You understand that if you in fact qualify as a youthful offender, that would subject you to up to four years imprisonment followed by two years community control?
>
> PETITIONER: Yes, sir.

(R 63) The judge ordered the State to prepare a sentencing guidelines scoresheet. (R 65)

The parties reconvened before Judge Mathis for sentencing on December 4, 1996. (R 67-71) At sentencing the parties reviewed the terms of the plea agreement and defense counsel noted that the petitioner's then-current one-year Duval County sentence was to expire February 24. (R 69) The judge announced

> THE COURT: Mr. Jeffries, I have reviewed your scoresheet and find you are appropriate for a mid-guidelines sentence. I will recommend that you be treated as a youthful offender.

(R 69) The judge went on to adjudicate the petitioner guilty as charged and to sentence him to 75 months in the Department of Corrections, that term to run concurrently to any active sentence. (R 69-70) The sentencing guidelines scoresheet in the record shows that Petitioner has two prior misdemeanor convictions and no prior felony convictions; the permitted guidelines sentencing range was 51.3 to 85.5 months in prison. (R 28-29)

Timely notice of appeal was filed from the December 4 judgment

and sentencing orders on December 23, 1996. (R 33) The petitioner argued through counsel on appeal that his sentence should be vacated because although he was a juvenile being sentenced as an adult pursuant to Section 39.059 of the Florida Statutes, there was no indication in the record that the trial court had ordered or considered the statutorily-mandated presentence investigation report and no indication in the record that the trial court had considered the statutorily-mandated criteria for sentencing a juvenile as an adult. See Section 39.059(7)(a), (7)(c), (7)(I), Florida Statutes (1995). The State, on appeal, argued that the Criminal Appeal Reform Act applies to cases where, as here, a juvenile is sentenced as an adult; the State's position was that the petitioner did not comply with the strictures of the Act in the trial court and that accordingly the issues argued were not preserved for appeal. The Fifth District Court of Appeal, in its case no. 97-35, affirmed Petitioner's sentence on November 7, 1997, with an opinion consisting solely of a citation to Cargle v. State, 701 So. 2d 359 (Fla. 1st DCA 1997). (The appendix to this brief includes copies of Jeffries v. State, 701 So. 2d 123 (Fla. 5th DCA 1997), and of Cargle.)

Timely notice to invoke this court's jurisdiction was filed Monday, December 8, 1997, and after considering jurisdictional

briefs this court accepted jurisdiction by its order dated May 15, 1998.

SUMMARY OF ARGUMENT

This court has held unequivocally that the Criminal Appeal Reform Act does not apply in "juvenile delinquency proceedings." In two District Courts of Appeal the State has successfully distinguished proceedings involving juveniles in the criminal courts from proceedings in the juvenile courts; those DCA's have held that the Appeal Reform Act applies to the former. The juvenile-delinquency chapter of the Florida Statutes authorizes and closely regulates proceedings involving juveniles in the criminal courts and authorizes appeals from those proceedings, and this court's decision in State v. T.M.B., 23 Fla. L. Weekly S180 (Fla. April 2, 1998), should be applied to those cases as well as to cases which begin and end in the juvenile courts. The distinction drawn by the District Courts is unnecessary and is based on an unsound reading of the relevant laws, and this court should quash the decisions that draw the distinction.

ARGUMENT

POINT I

THE CRIMINAL APPEAL REFORM ACT DOES NOT APPLY TO THIS CASE, AND DOES NOT APPLY GENERALLY TO CASES GOVERNED BY THE JUVENILE-DELINQUENCY PROVISIONS OF THE FLORIDA STATUTES; THE DECISIONS IN THIS CASE AND IN CARGLE v. STATE, 701 SO. 2D 359 (FLA. 1ST DCA 1997), ARE INCONSISTENT WITH STATE v. T.M.B., 23 FLA. L. WEEKLY S180 (FLA. APRIL 2, 1998).

This court held in State v. T.M.B., 23 Fla. L. Weekly S180 (Fla. April 2, 1998), that the Criminal Appeal Reform Act does not apply "in juvenile delinquency proceedings." The State has successfully taken the position, in this case and in Cargle v. State, 701 So. 2d 359 (Fla. 1st DCA 1997), that cases where a juvenile is sentenced as an adult are not governed by the rule of T.M.B. (which was originally announced by the First District Court of Appeal then affirmed by this court. See T.M.B. v. State, 689 So. 2d 1215 (Fla. 1st DCA 1997)). The distinction drawn by the First DCA in Cargle and adopted by the Fifth DCA in this case, between proceedings in the juvenile courts and proceedings involving juveniles in the criminal courts, is not one this court should recognize. This court should quash the decisions reached in this case and in Cargle, and should make it clear that T.M.B. creates a bright-line rule that applies to all proceedings governed by the

juvenile-delinquency provisions of the Florida Statutes.

The State filed an information in this case charging the petitioner, who was then sixteen years old, with robbery with a BB gun. The information was filed pursuant to Section 39.052(3)(a)5.b(I), Florida Statutes (1995),[1] which permits the State to file an information rather than a delinquency petition against a juvenile who is at least 16 years old if the juvenile commits any felony and if in the State Attorney's judgment adult sanctions need to be considered. Even though an information is filed in such a case the judge has discretion to impose juvenile rather than adult sanctions.[2] The State's power to institute adult proceedings against juveniles "does not...relieve [the court] of any duty conferred upon the court by law."[3]

In every case where a juvenile is proceeded against as an adult, the trial court must consider a presentence investigation report prepared by the Department of Corrections which contains

---

[1]Chapter 39 of the Florida Statutes (1995) governed this case in the trial and appellate courts. As this court noted in T.M.B., the juvenile-delinquency statutes have since that time been moved to Chapter 985 of the Florida Statutes, effective October 1, 1997. 23 Fla. L. Weekly at S181, n.1. Direct filing of informations against juveniles is now governed by Section 985.227, Florida Statutes (1997).

[2]39.052(3)(a)5.d, Florida Statutes (1995); 985.233(1)(a), (4)(b), Florida Statutes (1997).

[3]39.052(3)(c), Florida Statutes (1995).

comments prepared by the Department of Juvenile Justice.[4] The sentencing judge must consider eight criteria:

> 1. The seriousness of the offense to the community and whether the community would best be protected by juvenile, youthful offender, or adult sanctions;
>
> 2. Whether the offense was committed in an aggressive, violent, premeditated, or willful manner;
>
> 3. Whether the offense was against persons or against property, with greater weight being given to offenses against persons, especially if personal injury resulted;
>
> 4. The sophistication and maturity of the offender;
>
> 5. The record and previous history of the offender, including:
>
> a. Previous contacts with the Department of Corrections, the Department of Juvenile Justice, the Department of Health and Rehabilitative Services, or other facilities or institutions;
>
> b. Prior periods of probation or community control;
>
> c. Prior adjudications that the offender committed a delinquent act or violation of law as a child;
>
> d. Prior commitments to the Department of Juvenile Justice, the Department of Health and Rehabilitative Services, or other facilities or institutions;
>
> 6. The prospects for adequate protection of

[4] 39.059(7)(a), Florida Statutes (1995); 985.233(3)(a), (3)(b) (1997).

> the public and the likelihood of deterrence and reasonable rehabilitation of the offender if assigned to services and facilities of the Department of Juvenile Justice;
>
> 7. Whether the Department of Juvenile Justice has appropriate programs, facilities, and services immediately available;
>
> 8. Whether youthful offender or adult sanctions would provide more appropriate punishment and deterrence to further violations of law than the imposition of juvenile sanctions.[5]

While a court-minutes page in the record of this case indicates that the trial judge ordered a presentence investigation report, nothing said on the record at sentencing indicates that if such a report was in fact prepared the trial judge considered its contents. *Nothing* in the record indicates that the court considered the mandatory statutory criteria for sentencing juveniles as adults, and nowhere on the record did the trial court obtain a waiver from the petitioner of his right to have those criteria considered. While a juvenile can waive the right to consideration of the statutory criteria, such a waiver must be knowing, intelligent, *and manifest on the record.* Veach v. State, 614 So. 2d 680, 681 (Fla. 1st DCA 1993), aff'd 630 So. 2d 1096 (Fla. 1994).

As noted above, the State argued successfully in the District

---

[5]39.059(7)(c), Florida Statutes (1995); 985.233(1)(b), Florida Statutes (1997).

Court of Appeal that the Criminal Appeal Reform Act applies to this case and that the issues argued on appeal were not preserved in a manner sufficient to satisfy the Act. The petitioner argued in the District Court, and now again argues, that the Appeal Reform Act is irrelevant to *this* case whether or not it applies generally to cases in which juveniles are sentenced as adults, because there is *no* indication that the statutory criteria were considered. Cf. Cargle. Any waiver of the right to have the mandatory criteria considered must *affirmatively* appear of record, see Veach, and here the record contains no waiver. Accordingly the Appeal Reform Act is irrelevant to this case, and the decision of the District Court of Appeal affirming Petitioner's sentence should be quashed on the basis of Veach and this case remanded to the trial court for resentencing.

In the event this court disagrees with the argument made above, the petitioner submits that in Cargle and in this case the District Courts of Appeal have drawn a distinction that this court should disregard. In T.M.B., this court held, based on a straight-forward analysis of legislative intent, that the Criminal Appeal Reform Act of 1996 does not apply to "juvenile delinquency proceedings." In a unanimous opinion this court noted that Section

39.069[6] of the Florida Statutes governs the right to appeal from orders entered in juvenile delinquency proceedings, and concluded that the 1996 amendments to Chapter 924 simply were not intended to and did not amend Section 39.069. 23 Fla. L. Weekly at S180, citing J.M.J. v. State, 22 Fla. L. Weekly D1673 (Fla. 1st DCA July 7, 1997).

In J.M.J., the First DCA panel had held that the Reform Act did not apply to juvenile proceedings for two reasons: first, the analysis of legislative intent adopted by this court, and second, the panel's perception that applying the Reform Act to juveniles would adversely affect their constitutional rights because there is no procedural vehicle for correcting a juvenile disposition order other than recourse to the appellate courts. J.M.J., 22 Fla. L. Weekly at D1673. That second line of reasoning in J.M.J. is conspicuously absent from the opinion in T.M.B., and is seriously undercut by the existence of Florida Rule of Juvenile Procedure 8.695, which is titled "Postdisposition Relief" and which allows motions to modify or terminate juvenile supervision without placing any limit on the content, timing or number of such motions. The distinction first drawn in Cargle v. State, between proceedings in the juvenile courts and proceedings involving juveniles in the

[6]Now 985.234.

criminal courts, is based *entirely* on the dubious second line of reasoning in J.M.J., to wit:

> It is our view that the imposition of adult sanctions pursuant to 39.059(7) on a child prosecuted as an adult is not strictly a juvenile proceeding. It is in the nature of a hybrid procedure. Although the requirements of section 39.059(7) must still be met, it must be remembered that the juvenile is being sentenced as an adult in criminal court. In J.M.J. v. State, 22 Fla. L. Weekly D1673 (Fla. 1st DCA 1997), this court noted that there are important procedural differences between juvenile delinquency proceedings and the procedures applicable in adult criminal matters. For example, juveniles sentenced as such in delinquency proceedings do not have the opportunity to correct sentencing errors in a procedure comparable to that in amended Florida Rule of Criminal Procedure 3.800(b), and there is no collateral review procedure afforded in delinquency proceedings similar to the procedure afforded adults under Florida Rule of Criminal Procedure 3.850. Id. Such is not the case for juveniles sentenced as adults. Accordingly, we hold that provisions of section 924.051, which require the preservation of issues for appeal, apply to the sentencing process by which juveniles are sentenced as adults.

Cargle v. State, 701 So. 2d at 361.

Chapter 39 of the Florida Statutes (1995), now Chapter 985, exhaustively governs cases where juveniles are prosecuted as adults. As noted above, that chapter permits such prosecutions and establishes who is subject to them and under what circumstances. It creates procedures the trial judges must follow when preparing to sentence the subject juveniles, cautions twice that they may still be sentenced as juveniles, and finally notes that

> It is the intent of the Legislature that the criteria and guidelines in this subsection are mandatory and that a determination of disposition under this subsection is subject to the right of the child to appellate review under s. 39.069.

39.059(7)(I), Florida Statutes (1995).[7] Plainly, both proceedings in the juvenile courts and proceedings involving juveniles in the criminal courts are governed by the juvenile-delinquency chapter of the Florida Statutes. Appeals from each kind of proceeding are--equally plainly--authorized by the juvenile-delinquency chapter of the statutes. The distinction drawn in Cargle is an unnecessary refinement of the sensible holding in T.M.B. that amendments to Chapter 924 simply do not affect the juvenile-delinquency laws

[7]Section 985.233(4)(e) retains the identical language except that the final reference is to Section 985.234. As this court noted in T.M.B., Section 985.234 is the functional equivalent of Section 39.069. State v. T.M.B., 23 Fla. L. Weekly at S181 n.5.

without some affirmative indication that they were meant to do so. The rule of State v. T.M.B. needs no elaboration, and this court should so hold by quashing Cargle and the decision in this case.

CONCLUSION

The petitioner requests this court to quash the District Court's decision in this case, to vacate the sentencing order entered by the trial court, and to remand this case for the trial court to consider the sentencing criteria mandated by the Legislature.

Respectfully submitted,

JAMES B. GIBSON
PUBLIC DEFENDER

_____

NANCY RYAN
ASSISTANT PUBLIC DEFENDER
Florida Bar No. 765910
112 Orange Avenue, Suite A
Daytona Beach, Florida 32114
Phone: 904/252-3367

COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing has been served on Robert A. Butterworth, Attorney General, of 444 Seabreeze Blvd., Fifth Floor, Daytona Beach, Florida, 32118, by U.S. Mail, this _____ day of June, 1998.

_____
NANCY RYAN