W00A 081

IN THE SUPREME COURT OF FLORIDA

JONATHAN JEFFRIES,

Petitioner,

v.

CASE NO. 92,007
5DCA CASE NO. 97-35

STATE OF FLORIDA,

Respondent.
_____/

ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

RESPONDENT'S BRIEF ON THE MERITS

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

ROBIN A. COMPTON
ASSISTANT ATTORNEY GENERAL
Fla. Bar #846864
444 Seabreeze Boulevard
5th Floor
Daytona Beach, FL 32118
(904) 238-4990

COUNSEL FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

FEDERAL CASES:

STATE CASES:

STATEMENT OF THE CASE AND FACTS

The State does not dispute Jeffries Statement of the Case and Facts, except that it adds the following. A presentence investigation was ordered by the trial court on October 30, 1996. (R 18)

SUMMARY OF THE ARGUMENT

The Criminal Appeal Reform Act applies to adult circuit court proceedings of a juvenile lawfully charged as an adult. Jeffries committed a serious crime, was charged as an adult and given all the benefits of adult proceedings including the right to trial by jury. Attendant to adult court proceedings is the obligation of section 924.051 which requires that in order to preserve a sentencing error, it must either be presented to the trial court or raised in a 3.800(b) motion to correct sentencing error. Jeffries' failure to avail himself of these procedural vehicles to raise sentencing errors precludes review on appeal.

ARGUMENT

POINT ON APPEAL

THE CRIMINAL APPEAL REFORM ACT APPLIES TO ADULT CIRCUIT COURT PROCEEDINGS OF A JUVENILE LAWFULLY CHARGED AS AN ADULT. (Restated)

Petitioner was charged by information and entered a negotiated plea of no contest to armed robbery with a weapon in violation of section 812.013(1)&(2), Florida Statutes (1995). The commission of the crime took place on May 23, 1996, when Petitioner was 16 years old. (R 1, 2) The State direct-filed an information in adult circuit court in charging him and he was subsequently sentenced to 75 months imprisonment. (R 23) He argued on direct appeal that the trial court erred by not considering the statutorily mandated enumerated criteria which are to be considered in all cases where a juvenile is sentenced as an adult. The District Court of Appeal *per curiam affirmed* Appellant's conviction and sentence relying solely on Cargle v. State, 701 So.2d 359 (Fla. 1st DCA 1997). (See attached appendix)

Cargle involves the same exact issue as the instant case. In that case, the defendant argued that the trial court failed to set forth in a sentencing order representation that it had considered the same statutory criteria as in the instant case. The First District found the issue to be waived because it was not preserved for appeal pursuant to the Criminal Appeal Reform Act. Cargle is presently before this Court for review in case number 92,031.

Jeffries argues that the Criminal Appeal Reform Act does not apply in cases where juveniles are prosecuted as adults and urges

this court to declare that State v. T.M.B., 23 Fla. L. Weekly S180 (Fla. April 2, 1998), creates a bright line rule that it applies to **all** proceedings governed by the juvenile-delinquency provisions of the Florida Statutes. Respondent disagrees. A State Attorney has prosecutorial discretion to direct-file an information in a criminal case division with respect to a person who at the time of commission of the alleged offense was 16 or 17 years old. §39.052(3)(a)5.b.(I), Florida Statutes (1995)[1]; State v. Wright, 669 So.2d 1132 (Fla. 3d DCA 1996); Washington v. State, 642 So.2d 61 (Fla. 3d DCA 1994). Jeffries's case was properly charged and processed as adult in nature, giving him certain rights and obligations attendant to an adult proceeding.

One of those rights that Jeffries was given in being prosecuted as an adult was the right to a jury trial. He was lawfully afforded the opportunity to have a jury trial as an adult, whereas as a juvenile, he would have no right to one. See, McKeiver v. Penn., 403 U.S. 528, 91 S.Ct. 1976, 29 L.Ed.2d 647 (1971)(juveniles are not constitutionally entitled to a jury trial); Fla.R.Juv.P. 8.110(c); §39.052(1)(b), Fla. Stat. (1995). Jeffries chose not to exercise that right as he decided to enter a no contest plea.

Jeffries also had the right to, and was subject to, adult rather than juvenile speedy trial provisions. See, State v.

---

[1] The legislature recently transferred the portions of chapter 39 relating to juvenile delinquency proceedings to chapter 985, effective October 1, 1997.

Wesley, 522 So.2d 1007 (Fla. 2d DCA 1988)(juvenile speedy trial rule is inapplicable to a child against whom an information has been properly filed); Bell v. State, 479 So.2d 308, (Fla. 2d DCA 1985)(nothing in statute or court rules that indicates the time limitations relating to juvenile proceedings were intended to apply to adult court proceedings initiated by information or indictment); Peavy v. Judge, Div. S, Fifteenth Judicial Circuit, 454 So.2d 800 (Fla. 4th DCA 1984)(juvenile charge dropped and then charged as adult; petitioner had fundamental right to trial by jury; remanded for discharge due to adult speedy trial violation).

Another one of the rights attendant to being prosecuted as an adult, is the right to file a Florida Rule of Criminal Procedure 3.800(b) motion to correct a sentencing error. Jeffries failed to do that and now attempts to seek protection from section 924.051's preservation requirements via the juvenile provisions of chapter 39. A child who is subject to adult proceedings and sanctions cannot rely on special treatment established for juvenile proceedings. Parr v. State, 415 So.2d 1353 (Fla. 4th DCA 1982), rev. denied, 424 So.2d 763 (Fla. 1982).

The legislature intended for section 924.051 to apply to Jeffries' **adult** proceedings, including his appeal, and the facts of this case illustrate why the preservation requirements should apply to juveniles lawfully charged as adults, thereby resulting in **adult proceedings**. Jeffries committed the serious crime of armed robbery with a weapon. At approximately 9:30 p.m., victim Morton Marks

allowed two boys who he had previously permitted to use his phone into his motel room. They put a gun to his neck and took $50 in cash, his car keys and his car. (R 2-11) Jeffries committed a serious crime, was charged as an adult, treated like an adult, was afforded the opportunity of a jury trial which he declined, and was given the benefit of adult speedy trial provisions. Clearly, he was given many benefits in being prosecuted as an adult that he would not have had if he had been processed as a juvenile. He should likewise be bound to follow the obligations attendant to adult proceedings, one of which is the obligation to object or file a 3.800(b) motion in order to provide the trial court with the opportunity to correct a purported error rather than raising it for the first time on appeal.

The purpose behind the inception of the Criminal Appeal Reform Act was best explained in Maddox v. State, 23 Fla. L. Weekly D720 (Fla. 5th DCA March 13, 1998):

> At the intermediate appellate level, we are accustomed to simply correcting errors when we see them in criminal cases, especially in sentencing, because it seems both right and efficient to do so. The legislature and the supreme court have concluded, however, that the place for such errors to be corrected is at the trial level and that any defendant who does not bring a sentencing error to the attention of the sentencing judge within a reasonable time cannot expect relief on appeal. This is a policy decision that will relieve the workload of the appellate courts and will place correction of alleged errors in the hands of the judicial officer best able to investigate and to correct any error. Eventually, trial counsel may even recognize the labor-saving and reputation-enhancing benefits of being adequately prepared for the sentencing hearing. Certainly, there is little risk that a defendant will suffer an injustice because of this new procedure; if any aspect of a sentencing is "fundamentally" erroneous and if counsel

> fails to object at sentencing or file a motion within thirty days in accordance with the rule, the remedy of ineffective assistance of counsel will be available. It is hard to imagine that the failure to preserve a sentencing error that would formerly have been characterized as a "fundamental" would not support an "ineffective assistance" claim.

At D721-722.

It certainly would have been easier to correct this problem at the trial level. The State admits that there is nothing in the record on appeal that indicates that the statutory criteria were considered. However, had Jeffries raised this claim at any time in the trial court, it could have easily been addressed and corrected.

In T.M.B., supra, this Court agreed with the district court in J.M.J v. State, 22 Fla. L. Weekly D1673 (Fla. 1st DCA July 7, 1997) in finding that section 924.051 is inapplicable to juvenile proceedings. The court in J.M.J. noted:

> ...applying section 924.051 will result in depriving the juvenile of any opportunity to correct the trial court's error because there is no procedure applicable to juvenile delinquency proceedings which is similar to that created by the supreme court when it amended Florida Rule of Criminal Procedure 3.800(b) to permit motions to correct sentencing errors, Amendments to Florida Rule of Appellate Procedure 9.020(g) and Florida Rule of Criminal Procedure 3.800, 675 So.2d 1374 (Fla. 1996); nor is there any procedure for collateral review in juvenile delinquency proceedings which is similar to that afforded to adults convicted of crimes by Florida Rule of Criminal Procedure 3.850. Thus, juveniles who wish to challenge the terms of a disposition order will be left without any means to do so.

In following this line of reasoning, the First District further held in Cargle v. State, 701 So.2d 359 (Fla. 1st DCA 1997), rev.

granted, Case No. 92,031, that the 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. It stated:

> The application of section 924.051 to the procedure whereby a juvenile is sentenced as an adult does not obviate the right to appeal guaranteed in section 39.059(7), it merely requires that any such error be preserved as explained below.
>
> * * * *
>
> As noted above, a juvenile sentenced as a juvenile in delinquency proceedings is not afforded this opportunity to preserve error, but a juvenile sentenced as an adult in criminal proceedings is not only required to preserve error for review under the Criminal Appeal Reform Act, but pursuant to Rule 3.800(b), he or she is afforded the opportunity to do so.

Cargle, at 361.

The availability of Rule 3.800 to Jeffries and his failure to use it are fatal to his argument. Jeffries had "a vehicle to correct sentencing errors in the trial court and to preserve the issue should the motion be denied," however, he failed to avail himself of it.

As pointed out in Cargle, imposition of adult sanctions pursuant to 39.059(7) on a child prosecuted as an adult is not strictly a juvenile proceeding but in the nature of a hybrid procedure. Id. at 61. Although the requirements of section 39.059(7) must still be met when sentencing a juvenile prosecuted as an adult, the juvenile is still being sentenced pursuant to

adult circuit court proceedings.

Jeffries argues that even if the Criminal Appeal Reform Act does apply to juveniles sentenced as adults, it is irrelevant in the instant case because there is no indication in the record that the statutory criteria for imposing adult sanctions were considered and no affirmative waiver appears on the record. §39.059(7)(c), Fla. Stat. (1995). Veach v. State, 614 So.2d 680 (Fla. 1st DCA 1993), aff'd, 630 So.2d 1096 (Fla. 1994). Cf. Cargle. Petitioner appears to be arguing fundamental error. The Fifth District no longer recognizes fundamental error in the sentencing context. Maddox v. State, 23 Fla. L. Weekly D720 (Fla. 5th DCA March 13, 1998). This Court held in Summers v. State, 684 So.2d 729 (Fla. 1996) that a trial court's failure to comply with statutory mandate which requires written findings in connection with the determination of suitability of adult sanctions is a sentencing error rather than fundamental error.

As stated above, in the instant case, Jeffries failure to preserve the issue either at sentencing or pursuant to a 3.800(b) motion precludes appellate review. He should have brought this claim to the attention of the trial court, where it could have been easily and effectively handled, resulting in the efficient use of scarce judicial resources. See Amendments to the Florida Rules of Appellate Procedure, 685 So.2d 773 (Fla. 1996)(conserving "scarce resources" as a rationale for Rule 3.800..., "requir[ing] that sentencing issues first be raised in the trial court"). Jeffries has acted and been treated in every respect as an adult, and so

T.M.B., supra is inapplicable.

CONCLUSION

Based on the arguments and authorities presented herein, Respondent requests this honorable Court affirm the decision of the district court of appeal.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

ROBIN A. COMPTON
ASSISTANT ATTORNEY GENERAL
Fla. Bar #846864
444 Seabreeze Boulevard
5th Floor
Daytona Beach, FL 32118
(904)238-4990

COUNSEL FOR APPELLEE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Answer Brief of Appellee has been furnished by interoffice mail/delivery to Nancy Ryan, Assistant Public Defender, 112 Orange Avenue, Daytona Beach, FL, 32114, this 26th day of June, 1998.

Robin A. Compton
Assistant Attorney General

IN THE SUPREME COURT OF FLORIDA

JONATHAN JEFFRIES,

Petitioner,

v.

CASE NO. 92,007
5DCA CASE NO. 97-35

STATE OF FLORIDA,

Respondent.
_____/

APPENDIX

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

ROBIN A. COMPTON
ASSISTANT ATTORNEY GENERAL
Fla. Bar #846864
444 Seabreeze Boulevard
5th Floor
Daytona Beach, FL 32118
(904) 238-4990

COUNSEL FOR RESPONDENT

PER CURIAM.

AFFIRMED. *See McCray v. State*, 699 So.2d 1366 (Fla.1997).

DAUKSCH, COBB and ANTOON, JJ., concur.

1

Kenneth W. DAVIDSON, Appellant,

v.

STATE of Florida, Appellee.

No. 97–2671.

District Court of Appeal of Florida, Fifth District.

Nov. 7, 1997.

3.800 Appeal from the Circuit Court for Putnam County; Stephen L. Boyles, Judge.

James B. Gibson, Public Defender, Daytona Beach, and Bryan Park, Assistant Public Defender, Palatka, for Appellant.

No appearance for Appellee.

PER CURIAM.

Kenneth W. Davidson's appeal of the summary denial of his motion to modify sentence pursuant to Florida Rule of Criminal Procedure 3.800(c) [1] is dismissed. *See Hallman v. State*, 371 So.2d 482 (Fla.1979); *Nixon v. State*, 658 So.2d 1180 (Fla. 2d DCA 1995) and *Bourjolly v. State*, 623 So.2d 870 (Fla. 3d DCA 1993), *rev. denied*, 634 So.2d 622 (Fla. 1994).

GRIFFIN, C.J., and COBB and PETERSON, JJ., concur.

1. Prior to July 1, 1996, Rule 3.800(c) was designated as subsection (b).

2

Norman B. HOWARD, Appellant,

v.

STATE of Florida, Appellee.

No. 97–233.

District Court of Appeal of Florida, Fifth District.

Nov. 7, 1997.

3.850 Appeal from the Circuit Court for Volusia County; S. James Foxman, Judge.

David S. Morgan of Law Offices of Damore & Morgan, Daytona Beach, for Appellant.

Robert A. Butterworth, Attorney General, Tallahassee, and Roberta J. Tylke, Assistant Attorney General, Daytona Beach, for Appellee.

PETERSON, Judge.

Based on *Surinach v. State*, 676 So.2d 997 (Fla. 3d DCA 1996), we affirm the trial court's order denying appellant's motion for post-conviction relief. As in *Surinach*, the affirmance is without prejudice to the appellant to file, if he has legally sufficient grounds to do so (and desires to do so), a motion to withdraw his plea.

AFFIRMED.

COBB and HARRIS, JJ., concur.

3

Johnathan JEFFRIES, Appellant,

v.

STATE of Florida, Appellee.

No. 97–35.

District Court of Appeal of Florida, Fifth District.

Nov. 7, 1997.

Appeal from the Circuit Court for St. Johns County; Robert K. Mathis, Judge.

James B. Gibson, Public Defender, and Nancy Ryan, Assistant Public Defender, Daytona Beach, for Appellant.

Robert A. Butterworth, Attorney General, Tallahassee, and Robin A. Compton, Assistant Attorney General, Daytona Beach, for Appellee.

PER CURIAM.

AFFIRMED. *Cargle v. State*, 22 Fla. L. Weekly D2215, — So.2d — (Fla. 1st DCA Sept.18, 1997).

GRIFFIN, C.J., and PETERSON and THOMPSON, JJ., concur.

1

Brady Scott BUSSELL, Appellant,

v.

STATE of Florida, Appellee.

No. 96–3275.

District Court of Appeal of Florida, Fifth District.

Nov. 7, 1997.

Appeal from the Circuit Court for Marion County; Thomas D. Sawaya, Judge.

James B. Gibson, Public Defender, and Rebecca M. Becker, Assistant Public Defender, Daytona Beach, for Appellant.

Robert A. Butterworth, Attorney General, Tallahassee, and Kelli R. Orndorff, Assistant Attorney General, Daytona Beach, for Appellee.

GRIFFIN, Chief Judge.

After pleading *nolo contendere* to conspiracy and trafficking in cocaine, reserving his right to appeal, appellant seeks review of the lower court's order denying his motion to dismiss. He claims he was entrapped as a matter of law. This contention is plainly without merit. *Munoz v. State*, 629 So.2d 90 (Fla.1993). At best, the testimony and other evidence on this issue created an issue of fact which appellant elected not to submit to a jury.

AFFIRMED.

W. SHARP, J., concurs.

DAUKSCH, J., concurs in result only.

2

Miguel E. GONZALEZ, Appellant,

v.

TOTAL EMPLOYMENT CORPORATION and Florida Unemployment Appeals Commission, Appellee.

No. 97–1807.

District Court of Appeal of Florida, Third District.

Nov. 12, 1997.

An Appeal from the Unemployment Appeals Commission.

Miguel E. Gonzalez, in proper person.

Geri Atkinson–Hazelton, Tallahassee, for Appellee Florida Unemployment Appeals Commission.

Before COPE, GERSTEN and SHEVIN, JJ.

PER CURIAM.

Affirmed. *See* Section 443.151(6)(b), Florida Statutes, (1995); *Delgado v. Concentrated Chemical Co.*, 644 So.2d 173 (Fla. 3d DCA 1994); *Arredondo v. Jackson Memorial Hospital*, 412 So.2d 912 (Fla. 3d DCA 1982).