

IN THE SUPREME COURT OF FLORIDA

DAVID LEONARD, :  
 :  
 Petitioner, :  
 :  
 vs. : Case No. 93,332  
 :  
 STATE OF FLORIDA, :  
 :  
 Respondent. :  
 :  
 \_\_\_\_\_ :

DISCRETIONARY REVIEW OF DECISION OF THE  
DISTRICT COURT OF APPEAL OF FLORIDA  
SECOND DISTRICT

REPLY BRIEF OF PETITIONER ON THE MERITS

JAMES MARION MOORMAN  
PUBLIC DEFENDER  
TENTH JUDICIAL CIRCUIT

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ATTORNEYS FOR PETITIONER

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## ARGUMENT

### ISSUE I

WHETHER THE DECISION IN LEONARD V. STATE, CASE NO. 96-4245 (Fla. 2d DCA June 10, 1998), CONFLICTS WITH THE FLORIDA SUPREME COURT AND DISTRICT COURT OF APPEAL OPINIONS AS TO WHETHER § 924.051(4), FLA. STAT. (SUPP. 1996) PROHIBITS REVIEW OF A SENTENCE EXCEEDING THE STATUTORY MAXIMUM ON DIRECT APPEAL WITHOUT A CONTEMPORANEOUS OBJECTION?

Appellant relies on the argument in his initial brief. Appellee argues that the trial court imposed an upward departure sentence based upon a negotiated plea agreement in which Leonard pled to attempted sexual battery. Since the Appellee argued this position, Appellant seeks to clarify his argument. Appellant's probation was revoked in two cases which were combined. Although he pled to attempted sexual battery in case number 89-9559, he was charged with and pled to performing lewd and lascivious act on a child in case number 89-7782. It is the sentence in case number 89-7782 that is being challenged as an illegal sentence.

The offense of performing a lewd and lascivious act on a child is a second degree felony which has the statutory maximum of 15 years. §800.04; §775.082, Fla. Stat. (1987). Initially, Leonard was sentenced for this offense to 15 years of probation under a

negotiated plea agreement (Vol.1:R11-12). When his probation was revoked in case number 89-7782, the trial court sentenced him to 30 years in prison for this second degree felony (Vol.1:R13-14,72). The 30 year prison sentence in case number 89-7782 clearly exceeds the statutory maximum for a second degree felony. This Court should follow its precedent and reverse the decision of the lower court to allow relief on direct appeal in case number 89-7782.

CERTIFICATE OF SERVICE

I certify that a copy has been mailed to Helene S Parnes, Suite 700, 2002 N. Lois Ave., Tampa, FL 33607, (813) 873-4739, on this \_\_\_\_\_ day of May, 2000.

Respectfully submitted,

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