IN THE SUPREME COURT OF FLORIDA

SALIM KAMAU LATIF,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

CASE NO. 93,385

AMENDED

PETITIONER'S BRIEF ON JURISDICTION

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT
M. A. LUCAS
ASSISTANT PUBLIC DEFENDER
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ATTORNEY FOR PETITIONER

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TABLE OF CITATIONS.

IN THE DISTRICT COURT OF APPEAL, FIFTH DISTRICT
OF THE STATE OF FLORIDA

SALIM KAMAU LATIF,	)	
	)	
Petitioner,	)	
	)	
vs.	)	CASE NO.
	)	
STATE OF FLORIDA,	)	
	)	
Respondent.	)	
	)	

STATEMENT OF THE CASE AND FACTS

Petitioner pled guilty in Count I, to possession of cocaine with intent to sell, a second degree felony and in Count II, to use or possession of drug paraphernalia, a first degree misdemeanor. (R 23-24, 44)

Petitioner's sentencing guidelines scoresheet indicated a minimum prison months of 24 and a maximum of 40 months. (R 3 1) Defense counsel disputed Petitioner's prior convictions for battery on a law enforcement officer and criminal mischief. (R 58) In Count I, Petitioner was sentenced to the maximum under the guidelines of 40 months incarceration with credit for 293 days time served. (R 25-26) As to Count II, Petitioner was sentenced to 293 with credit for 293 days time served. (R 27-28, 61) Petitioner appealed to the Fifth District

Court of Appeal. On appeal to the Fifth District Court of Appeal, Petitioner argued that the trial court erred in sentencing Petitioner to the maximum of 40 months incarceration where he objected to his prior record score on the score-sheet. On May 29, 1998, the Fifth District issued its opinion affirming Petitioner's sentence. See Latif v. Stats;, 23 Fla. L. Weekly D 1308 (Fla. 5th DCA May 29, 1998). (Appendix) In rejecting Petitioner's argument, the District Court held that defense counsel had abandoned his objection and cited Maddox v. State, 23 Fla. L. Weekly D 720 (Fla. 5th DCA March 13, 1998) which is currently pending for review with this Court in case number 92,805 (filed April 23, 1998).

A timely notice to invoke this Court's discretionary jurisdiction was filed on June 26, 1998.

SUMMARY OF THE ARGUMENT

This Honorable Court has discretionary jurisdiction pursuant to **Jollie v. State**, 405 So. 2d 418 (Fla. 1981) to review the instant case where the Fifth District Court of Appeal cited in its opinion to a case which is currently pending review with this Court.

ARGUMENT

THIS COURT HAS JURISDICTION TO REVIEW THE INSTANT CASE PURSUANT TO JOLLIE V. STATE, 405 So. 2d 418 (Fla. 1981).

Petitioner appealed to the Fifth District Court of Appeal, arguing that the trial court erred in sentencing him to the maximum provided by his scoresheet where he disputed his prior record. The Fifth District held that defense counsel had abandoned his objection and the issue was not preserved for appeal citing to the case of Maddox v. St&, 23 Fla. L. Weekly D 720 (Fla. 5th DCA March 13, 1998) which is currently pending review by this Court in case number 92,805 (filed April 23, 1998). This Honorable Court has discretionary jurisdiction to accept the instant case pursuant to Jollie v. State, 405 So. 2d 418 (Fla. 1981).

CONCLUSION

Petitioner respectfully requests this Honorable Court to exercise its discretionary jurisdiction and accept the instant case for review.

Respectfully submitted,

JAMES B. GIBSON
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SEVENTH JUDICIAL CIRCUIT

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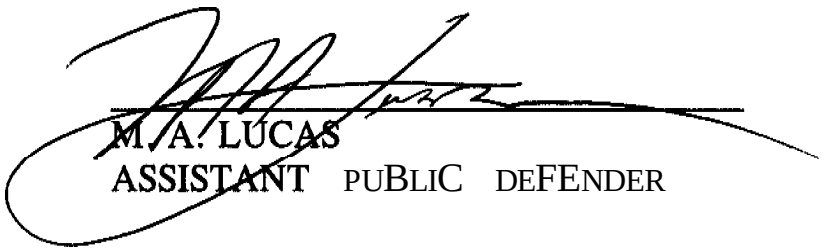
COUNSEL FOR PETITIONER

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 Blvd., Fifth Floor, Daytona Beach, FL 32118 via his basket at the Fifth District Court of Appeal and mailed to: Salim Kamau Latif, Inmate #613 165, Tallahassee Road Prison, 2628 A Springhill Road, Tallahassee, FL 32310, this 14th day of July, 1998.



M. A. LUCAS
ASSISTANT PUBLIC DEFENDER

IN THE SUPREME COURT OF FLORIDA

SALIM KAMAU LATIF,	)	
	)	
Petitioner,	)	
	)	
vs.	)	CASE NO.
	)	
STATE OF FLORIDA,	)	
	)	
Respondent.	)	

APPENDIX

Latif v. State, 23 Fla. L. Weekly D 1308 (Fla. 5th DCA May 29, 1998)

JAMES B. GIBSON
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SEVENTH JUDICIAL CIRCUIT

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deprivation of ' 'jurisdiction"),

PETITION GRANTED. (COBB, HARRIS, and PETERSON, JJ., concur.)

* * *

Criminal law—Appeals—Sentencing—Guidelines—Scoresheet—Challenge to scoresheet calculations cannot be raised on direct appeal where scoring issue was abandoned before trial court had opportunity to rule on it

SALIM KAMAU LATIIF, Appellant, v. STATE OF FLORIDA, Appellee. 5th District. Case No. 96-2992. Opinion filed May 29, 1998. Appeal from the Circuit Court for Volusia County, William C. Johnson. Jr., Judge. Counsel: James B. Gibson. public Defender, and M. A. Lucas, Assistant Public Defender, Daytona Beach, for Appellant. Robert A. Butterworth, Attorney General, Tallahassee, and David H. Foxman, Assistant Attorney General. Daytona Beach, for Appellee.

(ANTOON, J.) Salim Kamau Latiif (defendant) appeals his sentences which were imposed by the trial court after he pled guilty to the charges of possession of cocaine with intent to sell and possession of drug paraphernalia.[1] The defendant argues the trial court erred in calculating his prior record score in completing his sentencing guideline scoresheet. We affirm because this issue was not preserved for appellate review.

At the sentencing hearing, defense counsel advised the trial court that the defendant claimed that his prior record, which included convictions for battery on a law enforcement officer and criminal mischief, was erroneously scored on the guideline scoresheet. However, after bringing the matter to the court's attention, defense counsel abandoned his objection stating that "[i]f either of those offenses . . . were deleted, the points, I think, would only be 2.6 points. I don't know if it would have any significant effect on the ultimate sentence."

Subsections 924.051(3) and (4), Florida Statutes (Supp. 1996). and amended Florida Rule of Criminal Procedure 3.800(b) provide that a defendant who pleads guilty without expressly reserving his or her right to appeal the sentence either by raising the issue at the sentencing hearing, or by filing a motion to correct sentence within thirty days after the rendition of the sentence has failed to preserve the issue for purposes of appeal, See *Saldana v. State*, *698 So.* 2d 338 (Fla. 5th DCA 1997). An issue is preserved for appellate *review* when "the issue has been presented to, and ruled on by the trial court." *Maddox v. State, 23* Fla. L. Weekly D720 (Fla. 5th DCA March 13, 1998). Here, although the defense counsel refuted the calculations contained in the defendant's guideline scoresheet. the scoring issue was abandoned before the trial court had an opportunity to rule upon it. As a result, this claim of error cannot be raised on direct appeal, See *also Rodriguez* v. *State*, 650 So, 2d 1111, 1112 (Fla. 2d DCA 1995). *rev. denied, 699 So.* 2d 1375 (Fla. 1997).

AFFIRMED. (DAUKSCH and HARRIS, JJ., concur.)

[1] §§ 893.13(1)(a)1; 893.147(1), Fla. Stat. (1995).

* * *

Real property-Counties-Operation and maintenance of drainage system-Appellate court unable to find anything in development plans and contracts or in the law which prohibits owner of development that has completed a drainage system and operated system successfully throughout sales program from turning system over to property owners through owners' non-profit corporation for continued operation and maintenance after developer has completed sales program

FLAGLER COUNTY, Appellant. v. PALM COAST COMMUNITY SERVICE CORP., Appellee. 5th District. Case No. 97-1659. Opinion filed May 29, 1998. Appeal from the Circuit Court for Flagler County, Kim C. Hammond, Yudgc. Counsel: C. Allen Watts of Cobb, Cole & Bell. Daytona Beach, Special Counsel for Appellant, Flagler County, and Albert J. Hadeed, Bunnell, Flagler County Attorney. David A. Monaco and Michael S. Orfinger of Monaco, Smith, Hood. Perkins, Loucks & Stout, Daytona Beach, for Appellce.

(HARRIS, J.) Although we understand the County's concern about the possibility of having, presented to it in the future a poorly-maintained and under-funded drainage system, we nevertheless agree with the trial judge that there is nothing in the record which supports the counry's position. We find nothing in the various development plans and contracts, or in the law, which prohibits the owner of a development that has completed a drainage system and has operated the system successfully throughout its sales program from turning over that system to the property owners through a property owners' non-profit corporation for continued operation and maintenance after the developer has completed its sales program. The property owners' corporation has willingly accepted the conveyance of all the necessary property and equipment and has undertaken the obligation of operation and maintenance of the system,

AFFIRMED. (THOMPSON, J., concurs. GRIFFIN, C.J.. concurs in result only.)

* * *

Criminal law-Argument--So abuse of discretion in limiting comment as to possible prison time For defendant-In non-capital case, sentence is matter for judge, not jury

MICHAEL MCCOY. Appellant. v. STATE OF FLORIDA. Apptllee. 5th District. Case No. 97-2059. Opinion filed May 29. 1998. Appeal from the Circuit Court for Orange *County,* Dorothy J. Russell. Judge, Counsel: James B. Gibson, Public Defender. and Thomas J. Lukashow, Assistant Public Defender. Daytona Beach, for Appellant. Robert A. Butterworth, Attorney General, Tallahassee, and Mary G. Jolley, Assistant Attorney General, Daytona Beach, for Appellce.

(PER CURIAM.) Control of comments during closing argument is within discretion of the trial court and a court's ruling will not be disturbed absent a clear showing of- abuse of discretion. *Crump v. State*, 622 So. 2d 963 (Fla. 1993). The court did not limit comment as to a witness' possible motive for testifying against the defendant, but only limited comment as to possible prison time for the defendant, In a non-capital case any possible sentence for a defendant is a matter for the judge, and not the jury. No abuse of discretion is demonstrated here.

AFFIRMED. (COBB, THOMPSON, JJ., and ORFINGER, M., Senior Judge, concur.)

* * *

Unemployment compensation-Overpayments-Claimant who **had been employed as substitute teacher before the end of the academic year not entitled to compensation benefits for period between two academic years where claimant maintained his status as substitute teacher and had reasonable assurance of returning as a substitute when new academic term started**

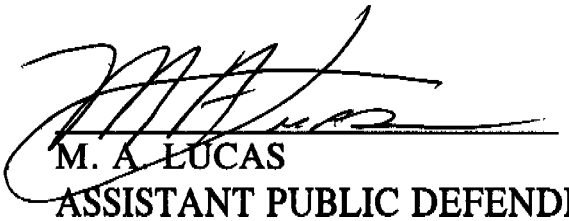
PAUL PARZIK, Appellant, v. UNEMPLOYMENT APPEALS COMMISSION, Appellce. 5th District. Case No. 97-2710. Opinion filed May 29. 1998. Administrative Appeal from the Unemployment Appeals Commission. Counsel: Paul Panik. Windermere, Pro Se. John D. Maher, Tallahassee, for Appellee.

(ORFINGER, M., Senior Judge.) This appeal is from an order of the Florida Unemployment Appeals Commission requiring appellant to repay to the Division of Unemployment Compensation the sum of $431.00 which appellant received as benefits and to which it had been determined he was not entitled. The appeals referee found that appellant had been employed as a substitute teacher by Orange County School Board from August 1995; in March 1997 he became self-employed. but maintained his status as a substitute teacher as an option for further income while he attempted to build his business. The referee further found that benefits were paid for the weeks ending June 7, 1997, June 14, 1997 and June 21, 1997; although the school year ended June 2, 1997; the academic term started on August 5, 1997 and appellant had reasonable assurance of returning as a substitute.

Section 443.091(3)(a) and (c), Florida Statutes (1996) provides that no benefits shall be paid for any period of unemployment between two academic years or during an established or customary Vacation period or holiday recess where services were performed prior to such periods and there is a reasonable assurance such individual will perform any such service in the period-

CERTIFICATE OF FONT

I HEREBY CERTIFY that the size and style of type used in this brief is 14 point proportionally spaced CG Times.



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