

IN THE SUPREME COURT OF FLORIDA

SALIM KAMAU LATIF,

Petitioner,

v.

CASE NO.: SC93385

STATE OF FLORIDA,

DCA case no.: 5D96-2992

Respondent.

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ON DISCRETIONARY REVIEW FROM  
THE FIFTH DISTRICT COURT OF APPEAL

RESPONDENT'S SUPPLEMENTAL BRIEF ON THE MERITS

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CERTIFICATE OF TYPE SIZE AND STYLE

The type size and style used in this brief is 12 point Courier New.

SUMMARY OF ARGUMENT

The issue in this case is whether the Petitioner should automatically be resentenced under the 1994 guidelines. Given the fact this was a negotiated plea agreement in which the State reduced the main offense from a first degree felony to the lesser included second degree felony, the State's position is that resentencing is not mandated.

ARGUMENT

POINT OF LAW

WHETHER THIS CASE SHOULD BE REMANDED  
FOR RESENTENCING UNDER THE 1994  
GUIDELINES.

The issue presented in this supplemental brief is the effect of the case of Heggs v. State, 25 Fla. L. Weekly S137 (Fla. Feb. 17, 2000)<sup>1</sup> on the Petitioner's sentence. The defense asserts that the Petitioner should simply be resentenced under the 1994 guidelines; however, the State disagrees.

In the case Trapp v. State, 25 Fla. L. Weekly S429 (Fla. June 1, 2000), this Court just recently clarified the window of cases to which the Heggs holding could be applicable. This Court held that persons whose offenses occurred on or after October 1, 1995, and before May 24, 1997, have standing to argue as to the legality of their sentences. The Petitioner committed his offenses at issue in this case on December 7, 1995. (R 3). This fact submits the Petitioner entitles him to be automatically resentenced under the 1994 guidelines. The State disagrees.

The facts of this case show that the Petitioner was originally charged with trafficking in cocaine which is a first degree felony. (R 3). However, pursuant to a negotiated plea, the State agreed to amend the charging information to the offense of possession of

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The case originally came to this Court based upon a sentencing preservation issue which was addressed in the case of Maddox v. State, 25 Fla. L. Weekly S367 (Fla. May 11, 2000).

cocaine with the intent to sale (which is only a second degree felony) in exchange for a plea of guilty. (R 44).

The plea agreement in this case included the fact the State would recommend a guideline's sentence; however, such recommendation came with the probable knowledge by the State of what range the Petitioner would score. In fact, often negotiated pleas are entered into by the State with the State agreeing to either drop charges or to reduce them to lesser included offenses based upon the knowledge of what range of the guidelines the defendant will fall. Furthermore, the Petitioner himself probably already knew what range he would score and entered his plea based upon the 1995 guideline range. He was told he was facing up to fifteen years in prison. Therefore, given the fact this was a negotiated plea, arguably no new sentencing is required.

Additionally, even if remand is required, there still should be no automatic resentencing. As the Fifth District Court of Appeal noted in the case Parker v. State, case no.: 5D99-3349 (Fla. 5th DCA June 16, 2000), the sentence imposed was part of the "quid pro quo." In Parker, the State dropped a count; in the instant case the State amended the information reducing the charged offense to a lesser included offense. As the Fifth District noted, the State at the very least should be given the opportunity to vacate the judgment and sentences and reinstate the original charges. See, Rickman v. State, 713 So. 2d 1115 (Fla. 5th DCA 1998), Jolly v. State, 392 So. 2d 54 (Fla. 5th DCA 1981).

In this case the State could reinstate the trafficking offense

given the fact that its bargain of up to 40 months has now been eliminated. The range in this case of 24 to 40 months (R 31) would change to 14.5 to 24.2 months<sup>2</sup> under the 1994 guidelines. Therefore, the State's offer was based upon facts which are now not the same. Simply resentencing the Petitioner would punish the State for entering into the plea. Therefore, if remand is found to be needed, the State should be placed in its original position.

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This is the calculation made by the undersigned as to the 1994 sentencing range. It includes the two offenses in the prior record which originally were the subject of this appeal.

CONCLUSION

Based on the arguments and authorities presented above, the State respectfully prays this Honorable Court affirm the judgments and sentences imposed by the trial court in all respects.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above Supplemental Brief has been furnished by delivery via the basket of the Office of the Public Defender at the Fifth District Court of Appeal to M. A. Lucas, counsel for the Petitioner, 112 Orange Ave. Ste. A., Daytona Beach, FL 32114, this \_\_\_\_\_ day of June 2000.

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