IN THE SUPREME COURT OF FLORIDA

CLEON GREENWOOD,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

CASE NO.94,142

PETITIONER'S INITIAL BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

Petitioner, Cleon Greenwood, was the Defendant in the Criminal Division of the Circuit Court of the Nineteenth Judicial Circuit, in and for St. Lucie County, Florida, and the Appellant in the Fourth District Court of Appeal. He will be referred to by name or as Petitioner in this brief. Respondent was the Prosecution in the trial court and the Appellee in the district court.

In this brief, the parties will be referred to as they appear before this Honorable Court.

The symbol "R" will denote the Record on Appeal documents.

The symbol "T" will denote the trial and sentencing transcripts.

STATEMENT OF THE CASE AND FACTS

Petitioner, Appellant, Cleon Greenwood, was charged by way of an information filed in the Nineteenth Judicial Circuit, in and for St. Lucie County, with Count I aggravated stalking of Debra Greenwood a third degree felony in violation of Section 784.048(4), *Florida Statutes* (1997), and Count II, aggravated stalking of Debra Greenwood. R 4-5. Appellant went to jury trial on the two charges. Appellant's motion for judgment of acquittal at the conclusion of the State's case was denied by the trial judge.

At trial, Debra Greenwood testified that she married Appellant during 1975. T 25. On December 8, 1995, their divorce became final. T 27, 61.

The parties stipulated that on July 9, 1996, Petitioner was ordered by Judge Bryan as a special condition of his probation not to contact his ex-wife, Ms. Debra Greenwood. T 25.

Debra Greenwood testified that Petitioner made contact with her by telephone on numerous occasions in violation of a court order prohibiting said contact.

Kim Polson, Mrs. Debra Greenwood's supervisor at her place of employment testified that Petitioner called their office on August 19, 1996. T 118. He wanted to speak to Debra Greenwood. T 118. She informed Petitioner that he was not at work that day. T 120.

Officer Beck of the St. Lucie County Sheriff's department testified that on July 29, 1996, he commenced an investigation into harassing or threatening telephone calls placed by Petitioner to Debra Greenwood. T 125. He gave tape recording equipment to Ms. Greenwood and instructed her to record any telephone calls placed to her by Petitioner. T 125. During the course of this investigation, Debra Greenwood appeared to be very frightened and upset. T 127-128.

Petitioner was found guilty by a jury of Count I, aggravated stalking as charged in the information. R 32, T 178. However, he was acquitted of Count II, aggravated stalking. R 32, T 178.

Appellant was scored pursuant to the *Fla. R. Crim. P.* 3.703 sentencing guidelines to a "total sentence points" of 83.8 which results in a recommended guidelines sentence of 55.8 months in prison. R 37. Appellant's recommended guideline sentence range was 69.75 maximum state prison months and 41.85 minimum state prison months. R 37, T 185. The Trial Judge sentenced Appellant to 69.75 months in prison with credit for six (6) months time served jail credit. T 191.

However, the written sentence order actually signed by the trial judge on June 7, 1997, failed to reflect any days credit for jail credit or time served in jail. (R 43).[See Appendix 1,

Written Sentence Order]

Timely Notice of Appeal was filed by Petitioner to the Fourth District Court of Appeal R 48.

The Fourth District in a written opinion, *Greenwood v. State*, 720 So. 2d 548 (Fla. 4th DCA 1998) [See Appendix 2], on the credit for time served sentencing issue raised by Petitioner ruled as follows:

> Although the written judgment of sentence does not conform to the oral pronouncement, no motion to correct sentence was filed. See *Fla. R. Crim. P.* 3.800(b). The issue is thus not preserved for appeal. See *Fla. R. App. P.* 9.140(d), *Hyden v. State*, 715 So. 2d 960 (Fla. 4th DCA 1998).

Id. at 548.

Petitioner's motion on August 13, 1998, for rehearing and/or certification of conflict was denied by the Fourth District Court of Appeal on October 6, 1998.

Timely Notice of Discretionary Review was filed by Petitioner on October 8, 1998. This brief on the merits follows.

SUMMARY OF THE ARGUMENT

This Honorable Court should quash the instant decision of the Fourth District in *Greenwood* as the decision conflicts with decisions of this Court on the same question of law. The Fourth District Court of Appeal in the instant case erroneously identified too narrow a class of sentencing errors which it will consider on appeal without preservation in the trial court.

The error at bar was the written sentencing order's failure to accurately reflect the trial court's oral pronouncement which is a sentencing error apparent on the face of the record that may be corrected on direct appeal without an objection in the lower court notwithstanding the Criminal Appeal Reform Act of 1996.

The courts of this State have repeatedly and consistently held that where the written sentence order does **not** conform to the trial court's oral pronouncement of judgment and sentence, the latter prevails. Appellate court's have historically enjoyed the right to order a trial court to correct a patent sentencing error that is identified by Appellate counsel or discovered by its own review of the entire record on appeal. On remand, Petitioner's written sentence order (R 43) must be corrected to reflect the oral pronouncement of six (6) months jail credit awarded to Petitioner by the Trial Judge at the sentencing hearing. T 191.

ARGUMENT

THE FOURTH DISTRICT COURT OF APPEAL IN THE INSTANT CASE AND IN *HYDEN V. STATE*, 715 SO. 2D 960 (FLA. 4TH DCA 1998)(*EN BANC*), ERRONEOUSLY IDENTIFIED TOO NARROW A CLASS OF SENTENCING ERRORS WHICH IT WILL CONSIDER ON APPEAL WITHOUT PRESERVATION IN THE TRIAL COURT.

Florida Rule of Criminal Procedure 3.700 defines "sentence" as a "pronouncement by the court of the penalty imposed on a defendant for the offense of which the defendant has been adjudged guilty." See also *Scantling v. State*, 711 So. 2d 524, 526, n.1 (Fla. 1998). At bar, the Trial Judge sentenced Appellant to 69.75 months in prison with credit for six (6) months time served (jail credit). T 191. However, the written sentencing order failed to reflect any credit for time served ordered by the trial court. R 43-44 (See Appendix 1).

The Fourth District in *Hyden v. State*, 715 So. 2d 960 (Fla. 4th DCA 1998)(*en banc*), cited by authority in this cause erroneously identified too narrow a class of sentencing errors which it will consider on appeal without preservation in the trial court. Further, the instant decision is in conflict with this Honorable Court's recent decision in *State v. Mancino*, 714 So. 2d 429 (Fla. 1998),wherein this Court clarified its holding in *Davis v. State*, 661 So. 2d 1193 (Fla. 1998) as follows:

> As is evident from our recent holding in *Hopping* [*Hopping v. State*, 708 So. 2d 263 (Fla. 1998)], we have rejected the contention that our holding in *Davis* mandates that *only* those sentences that facially exceed the statutory maximums may be challenged under rule 3.800(a) as illegal...**A sentence that patently fails to comport with statutory or constitutional limitations is by definition "illegal".**

Id. at 433.[Emphasis Added].

The error at bar is the written sentencing order's failure to accurately reflect the trial court's oral pronouncement which falls within the *Mancino* definition.

Petitioner will also address the Fourth District's error in holding that the longstanding rule that an oral pronouncement controls over an inconsistent written order has been abrogated by the Criminal Appeals Reform Act of 1996 (herein after "CARA"), Section 924.051(3), *Florida Statutes* (1997), amended *Fla. R. Crim. P.* 3.800(b) and amended *Fla. R. App. P.* 9.140(d).

Also, Petitioner respectfully submits that the well-settled law in Florida that sentencing errors apparent on the face of the record may be corrected on direct appeal is still viable despite the Criminal Appeal Reform Act of 1996 (CARA) and the ensuing rules changes.

THE ORAL PRONOUNCEMENT CONTROLS OVER A WRITTEN ORDER

The well-settled law in Florida is that a trial court's oral pronouncement controls over an inconsistent written order and that such ministerial error may be raised on direct appeal despite the absence of an objection in the trial court. *Davis v. State*, 677 So. 2d 1366 (Fla. 4th DCA 1996)(written order of community control did **not** conform to the oral pronouncement; reversed for correction); *Thomas v. State*, 595 So. 2d 287 (Fla. 4th DCA 1992)(oral pronouncement controls over written order); *Baker v. State*, 676 So. 2d 1050 (Fla. 3d DCA 1996)(written order revoking probation does not conform to trial court's oral pronouncements); *Jackson v. State*, 707 So. 2d 775 (Fla. 2d DCA 1998)(pre-CARA offense); *Anderson v. State*, 616 So. 2d 200 (Fla. 5th DCA 1993); *Rowland v. State*, 548 So. 2d 812 (Fla. 1st DCA 1989); *Farmer v. State*, 670 So. 2d 1143 (Fla. 1st DCA 1996).

Petitioner submits that the Criminal Appeal Reform Act of 1996 and the ensuing rules amendments have not abrogated this longstanding principle of law that an oral pronouncement controls over a written order and that it is within the inherent authority of a reviewing court to correct such a scrivener's error apparent on the face of the record on direct appeal.

Florida Rule of Criminal Procedure 3.700 defines "sentence" as a "pronouncement by the court of the penalty imposed on a defendant for the offense of which the defendant has been adjudged guilty." See *Scantling v. State, supra.* A "written sentence is merely a record of the actual sentence pronounced in open court." *Kelly v. State*, 414 So. 2d 1117, 1118 (Fla. 4th DCA 1982). It is the oral pronouncement that controls. *See State v. Williams*, 712 So. 2d 762 (Fla. 1998)(decided post-CARA; there is a judicial policy that the actual oral imposition of sanctions should prevail over any subsequent written order to the contrary).

Once a final decision has been announced unequivocally, the court lacks jurisdiction to retract it by entering a subsequent written order that is not in compliance with the orally announced final order. *See Marcinek v. State*, 662 So. 2d 771, 772 (Fla. 4th DCA 1995); *Drumwright v. State*, 572 So. 2d 1029, 1031 (Fla. 5th DCA 1991); *Flowers v. State*, 351 So. 2d 387 (Fla. 1st DCA 1977). An order is rendered, valid and binding, when orally given. *Briseno v. Perry*, 417 So. 2d 813 (Fla. 5th DCA 1982), *review denied*, 427 So. 2d 736 (1983). It may be corrected at any time to reflect what the court had, in fact, done. *Luhrs v. State*, 394 So. 2d 137 (Fla.

5th DCA 1981).[1]

In post-CARA cases, not only has this Court recognized this policy, *State v. Williams*, 712 So. 2d 762, the First Third and Fifth District Courts of Appeal have continued to remand for correction of a conflicting written order, finding that a trial court's oral pronouncement controls. *Walker v. State*, 701 So. 2d 401, 402 (Fla. 5th DCA 1997); *Smith v. State*, 705 So. 2d 1033 (Fla. 3d DCA 1998) (trial court's written finding that Smith failed to complete the community service condition did not conform to oral pronouncement finding that Smith completed the required hours; order to be corrected on remand); *Smith v. State*, 711 So. 2d 100 (Fla. 1st DCA 1998)(in violation hearing held post-CARA, written finding that defendant failed to pay costs conflicted with trial court's oral pronouncement; written finding erroneous).

SENTENCING ERRORS APPARENT ON THE FACE OF THE RECORD

The contemporaneous objection rule was created by the courts to promote fairness and judicial economy. *Castor v. State*, 365 So.

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[1] The Courts of this State have long recognized it's inherent power to correct clerical errors. *See Sawyer v. State*, 94 Fla. 60, 113 So. 736 (1927); *D'Alessandro v. Tippins*, 98 Fla. 853, 124 So. 455 (1929)("If the first sentence contained clerical or formal errors, the judgment as entered may at any time be corrected so as to speak the truth of what was in fact done by the court.")

2d 701 (Fla. 1978); *Bateh v. State*, 101 So. 2d 869, 874 (Fla. 1st DCA 1958) (on rehearing) (rule that questions not presented in the trial court will not be considered on appeal "is procedural in nature").

This Court has held that the reasoning behind the contemporaneous objection rule does **not** apply to certain sentencing errors which are apparent from the face of the record. *Davis v. State*, 661 So. 2d 1193; *State v. Rhoden*, 448 So. 2d 1013 (Fla. 1984); *State v. Montague*, 682 So. 2d 1085 (Fla. 1996). In *Rhoden*, this Court decided that the need for a contemporaneous objection was not necessary as to the sentencing process since the consequence of reversal was to merely remand the case for resentencing:

> The contemporaneous objection rule, which the state seeks to apply here to prevent respondent from seeking review of his sentence, was fashioned primarily for use in trial proceedings. The rule is intended to give trial judges an opportunity to address objections made by counsel in trial proceedings and correct errors...The rule prohibits trial counsel from deliberately allowing known error to go uncorrected as a defense tactic and as a hedge to provide a defendant with a second trial if the first trial decision is adverse to the defendant... The purpose of the contemporaneous objection rule is not present in the sentencing process because any error can be corrected by a simple

remand to the sentencing judge.

448 So. 2d at 1016. This principal was reaffirmed in *Davis v. State*, 661 So. 2d 1193, and again in *State v. Montague*, 682 So. 2d 1085, a case decided since the enactment of the Criminal Appeal Reform Act. While *Davis* held that sentencing errors which did not result in an illegal sentence in excess of the maximum permitted by law did not constitute fundamental error which could be raised for the first time on post-conviction relief, *it expressly held that such error, if apparent on the face of the record, could be raised for the first time on appeal.* *Davis*, 661 So. 2d at 1197. In *Davis*, this Court wrote:

> Normally, to raise an asserted error in an appeal, a contemporaneous objection must have been made before the trial court at the time the asserted error occurred. The general exception to this rule is that an asserted error may be raised for the first time on appeal if the error is "fundamental."...We have distinguished this general rule, however, as it pertains to claimed errors in the sentencing process that are apparent on the face of the record. *See, e.g., Taylor v. State*, 601 So. 2d 540 (Fla. 1992); *Rhoden*. When sentencing errors are apparent on the face of the record, the purpose of the contemporaneous objection rule is not present because the error can be corrected by a simple remand to the sentencing judge. [Citation omitted] Additionally,...it is difficult, if not impossible, for counsel to contemporaneously object to the absence of a

> written sentencing order at the sentencing hearing because, at the stay, counsel does not know whether a written order is being filed or what it will say.

Id. at 1197.

Thus, *Davis* did *not* preclude the consideration of sentencing errors *apparent on the face of the record* on appeal even in the absence of an objection. When this Court recently clarified the *Davis* definition of an illegal sentence in *State v. Mancino*, significantly, this aspect of the decision concerning sentencing error apparent on the face of the record was not receded from.

In addition, and significantly, in a case decided subsequent to the enactment of the Criminal Appeal Reform Act, *State v. Montague*, 682 So. 2d at 1088, this Court held:

> We have repeatedly held that absent an illegal sentence or an unauthorized departure from the sentencing guidelines, [footnote omitted] only sentencing errors "*apparent on the face of the record* do not require a contemporaneous objection in order to be preserved for review." *Taylor v. State*, 601 So. 2d 540, 541 (Fla. 1992) (emphasis added); *see also Merchant v. State*, 509 So. 2d 1101 (Fla. 1987) (holding that trial court's erroneous classification of defendant's prior conviction for second-degree murder as a life felony, which was apparent from *four corners of record*, and resulted in sentencing departure, could be raised for first time on appeal); *Forehand v. State*, 537 So. 2d 103, 104 (Fla. 1989) ("absent a contemporaneous

> objection...sentencing errors must be *apparent on the face of the record* to be cognizable on appeal") (emphasis added); *Dailey v. State*, 488 So. 2d 532, 534 (Fla. 1986)(alleged sentencing errors requiring an evidentiary determination may not be initially raised on appeal)...We have addressed the contemporaneous objection issue in its varying forms for well over a decade. The enduring policy rationale in our decisions is that there is an appropriate time and forum for making objections to alleged sentencing errors...By our decision today, we again emphasize that the sentencing hearing is the appropriate time **to object to alleged sentencing errors based upon disputed factual matters.**

(Emphasis supplied).

Violation of Separation of Powers

Article V, Section 2(a), of the *Florida Constitution* confers on the Supreme Court the exclusive power to adopt rules for the practice and procedure in all courts. "All courts in Florida possess the inherent powers to do all things that are reasonable and necessary for the administration of justice within the scope of their jurisdiction, subject to valid existing laws constitutional provisions." *State v. Ford*, 626 So. 2d 1338, 1345 (Fla. 1993); *In re Order on Prosecution of Criminal Appeals by Tenth Judicial Circuit Public Defender*, 561 So. 2d 1130, 1133 (Fla. 1990). A statute which purports to create or modify a procedural rule of

court is constitutionally infirm. *Markert v. Johnson*, 367 So. 2d 1003 (Fla. 1978).

Sections 924.051(3) and (8), *Florida Statutes*,(1997) create procedural barriers to the right to appeal by requiring a threshold showing of prejudice and preservation, and by restricting the appellate court's inherent authority to review errors apparent on the face of the record. Subsection (3) precludes reversal on appeal unless the appellate court determines after a review of the complete record that prejudicial error occurred and was properly preserved in the trial court, or, if not properly preserved, constituted fundamental error. While this Court has stated that the legislature may place reasonable conditions on the constitutional right to appeal so long as the conditions do not thwart litigants' legitimate appellate rights, *Amendments to Florida Rules of Appellate Procedure*, 696 So. 2d 1103, 1104 (Fla. 1996), the above statutes conflict with the applicable rules of procedure.

The appellate rules do not require a showing of prejudice and preservation as a prerequisite to the right to appeal. Unlike the statute, there are no provisions in the rules or state constitution which limit the courts' ability to review cases or remedy errors

where deemed reasonable and necessary for the administration of justice. On the contrary, the rules clearly allow the courts to exercise their jurisdiction to achieve justice. *Fla. R. App. P.* 9.040(d) ("At any time in the interest of justice, the court may permit any part of the proceeding to be amended so that it may be disposed of on the merits. In the absence of amendment, the court may disregard any procedural error or defect that does not adversely affect the substantial rights of the parties"); *Fla. R. App. P.* 9.140(h) (Appellate court "shall review all rulings and orders appearing in the record necessary to pass upon the grounds of an appeal. In the interest of justice, the court may grant any relief to which a party is entitled").[2] The Florida legislature

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[2] In fact, appellate courts have historically enjoyed the right to review issues on appeal where such review is deemed essential to the administration of justice, whether or not prejudice is alleged or the error preserved. *See, e.g., Bennett v. State*, 127 Fla. 759, 173 So. 817, 819 (1937) (appellate court may consider questions not raised or reserved in the trial court in the exercise of its inherent power "when it appears necessary to do so in order to meet the ends of justice or to prevent the invasion or denial of essential rights"); *Cleveland v. State*, 287 So. 2d 347, 348 (Fla. 3d DCA 1973) (despite fact that no argument was raised challenging the sentence on appeal, court held it was within scope of appellate review to consider an illegal sentence or illegal part of a sentence which appeared on appeal, relying on former Florida Appellate Rule 6.16 which provided in part: "The court may also in its discretion, if it deems the interests of justice to require, review any other things said or done in the cause which appear in the appeal record, including instructions to the jury").

cannot interfere with this inherent judicial power without compromising the independence of the judiciary.

The Appellate courts' inherent powers also include examining records on appeal to determine whether an objection is sufficient to preserve an alleged error for appellate review, whether an error constitutes fundamental reversible error, or whether a sentencing error is apparent on the face of the record and reversible even in the absence of objection. *Davis; Rhoden; Montague*. Again this inherent power cannot be abrogated by legislature fiat. To the extent that Section 924.051 establishes procedures for the courts to conduct their appellate review, it violates the separation of powers. Article II, Section 3, *Fla. Const.* See cf. *Denson v. State*, 711 So. 2d at 122.

The expressed intent of the Criminal Appeal Reform Act was to reduce the volume of appeals and increase the efficiency of the courts. This Court has attempted to effectuate the intent of the legislature while striving to safeguard litigants' rights when it adopted the Appellate rules changes. However, Petitioner submits that at this point it has become all too obvious that the Criminal Appeal Reform Act and the rules changes have not had the desired effect. Indeed, as recently recognized by the Third District it

has had the opposite effect. *Mizell v. State*, 716 So. 2d 830 n.1[3]

While the Florida Legislature apparently only attempted to codify the existing case law regarding the contemporaneous objection rule, the statute has been given effect far beyond that, leaving the appellate courts in virtual chaos where the known has become the unknown, where instead of reducing appeals it has become obvious that a massive system of unnecessary legal churning has been put in place depending upon which district court a defendant finds himself or herself. The statute and rules amendments have spawned confusion and uncertainty within the judicial system and generated conflicts throughout the district courts. *See e.g. Maddox v. State*, 708 So. 2d 617 (Fla. 5th DCA 1998)(*en banc*), *review granted*, No. 92,805 (Fla. July 7, 1998); *Denson v. State*,

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[3] "It is ironic that, although this amendment to the Florida Appellate Rules, and, more to the point, the Criminal Appeal Reform Act of 1996, ch. 96-248, Laws of Fla.; § 924.051, *Fla. Stat.* (Supp. 1996), which engendered it, were largely meant to reduce a supposedly oppressive appellate caseload, they have had quite the opposite effect. In addition to creating an entirely new and difficult body of law of its own--including *en banc* consideration and certified questions of such arcane matters as whether an unpreserved error should result in a affirmance or dismissal, *Thompson v. State*, 708 So. 2d 289 (Fla. 4th DCA 1998) -- the Act has,as in this very case, required a resort to creative judging to achieve results which had been routinely and straightforwardly arrived at before . We will not resist the urge to refer to the relative merits of the cure and the disease or to observe that one should not repair something that is in no need thereof." *Mizell*.

711 So. 2d 1225 (Fla. 2d DCA 1998); *Mizell v. State, supra; Jordan v. State*, 23 Fla. L. Weekly D2130 (Fla. 3d DCA Sept. 16, 1998).

One troubling aspect of the turmoil has been in the area of written orders which fail to conform to oral pronouncements and patent and prejudicial sentencing errors apparent from the face of the record which previously appellate courts would have quickly and efficiently ordered corrected on remand, but which several appellate courts have since refused to do. See *Greenwood v. State, supra*.

Instead, in some districts litigants with unpreserved "non-fundamental" errors apparent from the face of the record are being compelled to seek collateral relief unassisted by counsel. This results in increased case loads in the trial courts with the increased filings of motions pursuant to Florida Rules of Criminal Procedure 3.800 and 3.850, increased appeals from adverse rulings, and, more importantly, increased periods of incarceration defendants are being forced to serve while attempting to correct obvious and prejudicial sentencing errors on the face of the record. See *Denson v. State, supra*. This absurdity has continued to the point that the Third District has determined that rather than engaging in this legal churning, that as an attorney's failure

to object to an error which once was either fundamental or correctable on direct appeal is ineffective assistance of counsel on its face, that court elected to exercise its inherent authority and simply find that ineffective assistance of counsel was rendered and order the error corrected when brought to the court's attention on direct appeal. See *Mizell*, 716 So. 2d at 830.

Further, the instant decision conflicts with the recent decision of the Second District Court of Appeal in *Denson v. State*, 711 So. 2d 1225 (Fla. 2d DCA 1998), which held:

> Notwithstanding the broad language in section 924.051(3), we hold that when this court otherwise has jurisdiction in a criminal appeal, it has discretion to order a trial court to correct an illegal sentence or a serious, patent sentencing error that is identified by appellate counsel or discovered by this court on its own review of the record. To rule otherwise would be contrary to the intent and goals of the Criminal Appeal Reform Act and would raise substantial constitutional concerns undermining the integrity of the courts.

Id. at 1226. In arriving at this conclusion, the *Denson* court also noted:

> The second sentence attempts to restrict either our scope of review or our standard of review because, even if we have jurisdiction, the legislature is attempting to prohibit the court from reversing a sentence on an issue concerning a prejudicial error that is neither

preserved nor fundamental. As a general rule, this statute comports with the appellate courts' own customary restrictions on their standard of review. However, there are rare occasions when the courts--for the orderly administration of justice and for due process concerns--have not followed this general rule. In light of the constitutional separation of powers, the legislature cannot unreasonably restrict our scope or standards of review when due process and the orderly administration of justice require that we review such issues. **When this court already has jurisdiction over a criminal appeal because of a properly preserved issue, we do not avoid a frivolous appeal or achieve efficiency by ignoring serious, patent sentencing errors. Limiting our scope or standard of review in these circumstances is not only inefficient and dilatory, but also risks the possibility that a defendant will be punished in clear violation of the law.**

* * *

Prisoners are entitled to legal representation on direct appeal, but not in most post conviction proceedings. *See* § 924.051(9), .066(3). At least until our newly revised rules of appeal for sentencing errors have been fully delineated, there is a real risk that serious sentencing errors, raising significant due process concerns, may not be corrected or may not be corrected in time to provide meaningful relief to a prisoner filing *pro se* motions if they cannot be corrected with the assistance of counsel on direct appeal.

If a goal of criminal appeal reform is efficiency, we are hard pressed to argue that this court should not order correction of an illegal sentence or a facial conflict between oral and written sentences on a direct appeal

> when we have jurisdiction over other issues. Although it is preferable for the trial courts to correct their own sentencing errors, little is gained if the appellate courts require prisoners to file, and trial courts to process, more postconviction motions to correct errors that can be safely identified on direct appeal. Both Mr. Denson and the Department of Corrections need legal written sentences that accurately reflect the trial court's oral ruling. We conclude that our scope and standard of review in a criminal case authorizes us to order correction of such a patent error.
>
> Efficiency aside, appellate judges take an oath to uphold the law and the Constitution of this state. The citizens of this state properly expect these judges to protect their rights. When reviewing an appeal with a preserved issue, if we discover that a person has been subjected to a patently illegal sentence to which no objection was lodged in the trial court, neither the Constitution nor our own consciences will allow us to remain silent and hope that the prisoner, untrained in the law, will somehow discover the error and request its correction. If three appellate judges, like a statue of the "see no evil, hear no evil, speak no evil" monkeys, declined to consider such serious, patent errors, we would jeopardize the public's trust and confidence in the institution of courts of law. Under separation of powers, we conclude that the legislature is not authorized to restrict our scope or standard of review in an unreasonable manner that eliminates our judicial discretion to order the correction of illegal sentences and other serious, patent sentencing errors.

Id. at 1228-1230 [Emphasis Added].(footnotes omitted).

The law does not exist for the convenience of the appellate courts; its purpose is to protect the citizens of this state -- all of the citizens, including those who have become lawbreakers. The Fifth Districts *Maddox* court's sanguine and totally misguided faith in the power of post-conviction attacks on the effectiveness of trial counsel to prevent an injustice to the defendant is unduly optimistic and ignores the reality of the procedural morass into which some defendants will and have been placed under the judicial interpretations which are emanating from some district courts. See *Denson v. State, supra*. ("Prisoners are entitled to legal representation on direct appeal, but not in most postconviction proceedings.") Also, there will be zero relief if the defendant received a short but illegal sentence.

Thus, the Fourth District in *Greenwood* erred in refusing to correct the jail credit sentencing error which is apparent on the face of the record. This Court should unequivocally hold that identified sentencing error apparent from the face of the record remain correctable on appeal when raised by appellate counsel or discovered by a reviewing court. To do otherwise promotes judicial delay and results in an unnecessary waste of judicial resources of the trial courts. See *Denson, supra*.

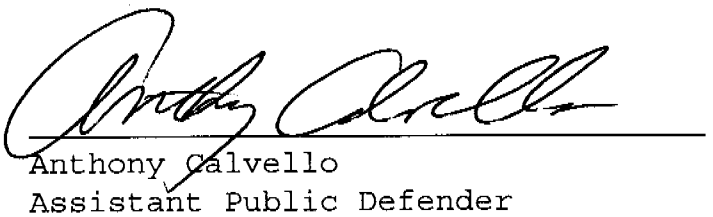
Therefore, this Honorable Court should *quash* the instant decision of the Fourth District Court of Appeal and remand the instant cause with directions to reverse and remand for the entry of written orders on jail credit in conformance with the trial court's oral pronouncement.

CONCLUSION

Based on the arguments and authorities contained herein, Petitioner urges this Honorable Court to **quash** the instant decision of the Fourth District Court of Appeal and remand with appropriate directions.

Respectfully submitted,

RICHARD L. JORANDBY
Public Defender



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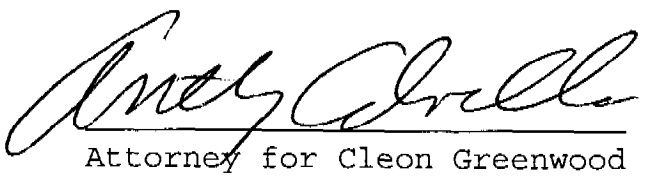
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the Petitioner's Initial Brief on the Merits has been furnished to Ettie Feistmann, Assistant Attorney General, Third Floor, 1655 Palm Beach Lakes Boulevard, West Palm Beach, Florida, 33401-2299 by courier this 26th day of January, 1999.



Attorney for Cleon Greenwood

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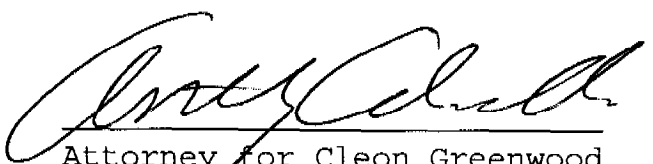


Attorney for Cleon Greenwood

IN THE FLORIDA SUPREME COURT

CLEON GREENWOOD,	)	
	)	
Petitioner,	)	
	)	
v.	)	CASE NO. 94,142
	)	
STATE OF FLORIDA,	)	
	)	
Respondent.	)	
	)	

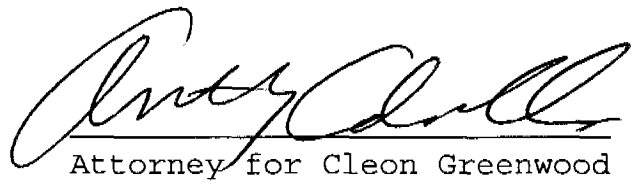
APPENDICES

1. Written Sentencing Order

2. *Greenwood v. State*, 720 So. 2d 548 (Fla. 4th DCA 1998)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the Appendices has been furnished by courier to Ettie Feistmann, Assistant Attorney General, Third Floor, 1655 Palm Beach Lakes Boulevard, West Palm Beach, Florida 33401-2999 on this 26th day of January, 1999.



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