

IN THE SUPREME COURT OF FLORIDA

DEREK ADSIDE,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

CASE NO.: SC94752

DCA case no.: 5D97-672

_____ /

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. It is the position of the State that the case should be remanded for resentencing.

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)¹ 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 between May and July of 1996. (R 188-192, 224-230, 407-412, 428-433). This fact submits the Petitioner entitles him to be automatically resentenced under the 1994 guidelines. The State disagrees.

While the Petitioner may eventually simply be resentenced within the guidelines, such a determination should be left to the trial court. The trial court originally imposed a guideline

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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).

sentence of 200 months followed by five years of probation. (R 188-192, 407-412, 428-433). Given the fact the sentencing range under the 1994 guidelines is lower, the trial court may wish to impose an upward departure sentence (assuming reasons exist). See, State v. Vanhorn, 561 So. 2d 584 (Fla. 1990), Carter v. State, 664 So. 2d 62 (Fla. 5th DCA 1995). Therefore, the State requests this Court to remand the case for resentencing.

CONCLUSION

Based on the arguments and authorities presented above, the State respectfully prays this Honorable Court remand this case for resentencing to the trial court.

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 Susan A. Fagan, counsel for the Petitioner, 112 Orange Ave. Ste. A., Daytona Beach, FL 32114, this _____ day of July 2000.

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