IN THE SUPREME COURT OF FLORIDA

DONNIE KEITH SASSNETT,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

CASE NO. 94,812

RESPONDENT'S ANSWER BRIEF

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PRELIMINARY STATEMENT

Respondent State of Florida, the Appellee in the District Court of Appeal (DCA) and the prosecuting authority in the trial court, will be referenced in this brief as Respondent, the prosecution, or the State. Petitioner, DONNIE KEITH SASSNETT, the Appellant in the DCA and the defendant in the trial court, will be referenced in this brief as Petitioner or by proper name.

The record on appeal consists of two volumes. Pursuant to Rule 9.210(b), Fla. R. App. P. (1997), this brief will refer to a volume according to its respective designation within the Index to the Record on Appeal. A citation to a volume will be followed by any appropriate page number within the volume. "IB" will designate Petitioner's Initial Brief, followed by any appropriate page number.

All emphasis through bold lettering is supplied unless the contrary is indicated.

CERTIFICATE OF FONT AND TYPE SIZE

This brief was prepared using Courier New 12.

STATEMENT OF THE CASE AND FACTS

The State agrees with Petitioner's statement of the case and facts.

It should be noted that this is the most recent of a series of cases based on the certified question in Locke v. State, 23 Fla. L. Weekly D2399 (Fla. 1st DCA 21 October 1998) which is on review

here under case no. 94,396. Other cases presenting the same certified question include Heird v. State, case no. 94,348 and McCray v. State, case no. 94,460. Presumably, this Court's decision in Locke will control the disposition of this and the other cases on which review is based on the Locke certified question.

A copy of the decision below is in appendix A.

SUMMARY OF ARGUMENT

The district court's analysis of the legal issue in Locke v. State, copy appended, is adopted by the state with additional comments.

The district court decision should be approved and a negative answer given to the certified question. Claims of sentencing error which are not preserved in the trial court either contemporaneously by objection or by motion pursuant to Florida Rule of Criminal Procedure 3.800 are not cognizable on direct appeal pursuant to section 924.051(3), Florida Statutes (Supp 1996), Florida Rule of Appellate Procedure 9.140(d), Amendments to the Florida Rules of Appellate Procedure, 685 So.2d 773 (Fla. 1996), Maddox v. State, 708 So.2d 617 (Fla. 5th DCA 1998)(**en banc)**, review pending, case no. 92,805, and Hyden v. State, 23 Fla. L. Weekly D1342 (Fla. 4th DCA 3 June 1998) (**en banc)**, review pending, case no. 93,966.

Moreover, given the number of remedies provided in the trial court to challenge sentencing errors, it cannot be seriously suggested that **any** claims of sentencing error should be first raised in the appellate courts as fundamental error. This Court's prohibition in rule 9.140(d) against raising any sentencing issue for the first time on appeal is solidly grounded on the ready availability of other remedies in the trial court.

ARGUMENT

ISSUE I

CERTIFIED QUESTION: DOES THE FAILURE OF THE TRIAL COURT TO ORALLY PRONOUNCE EACH STATUTORILY AUTHORIZED COST INDIVIDUALLY AT THE TIME OF SENTENCING CONSTITUTE FUNDAMENTAL ERROR?

The state adopts the district court's analysis of the legal issue in Locke v. State and readopts its answer brief in State v. Locke, case no. 94,396. For convenience of the reader, a copy of the Locke decision is in appendix B.

The district court decision should be approved and a negative answer given to the certified question. Claims of sentencing error which are not preserved in the trial court either contemporaneously by objection or by motion pursuant to Florida Rule of Criminal Procedure 3.800 are not cognizable on direct appeal pursuant to section 924.051(3), Florida Statutes (Supp 1996), Florida Rule of Appellate Procedure 9.140(d), Amendments to the Florida Rules of Appellate Procedure, 685 So.2d 773 (Fla. 1996), Maddox v. State, 708 So.2d 617 (Fla. 5th DCA 1998)(**en banc)**, review pending, case no. 92,805, and Hyden v. State, 23 Fla. L. Weekly D1342 (Fla. 4th DCA 3 June 1998)(**en banc**), review pending, case no. 93,966.

The state urges the Court to adopt the reasoning in Maddox that claims of fundamental sentencing error are no longer cognizable on appeal because the provisions of rules 3.800, 3.850, and 9.140(d) provide comprehensive, fail-safe remedies in

the trial court which obviate any need to address such claims for the first time on appeal.

There is no certain definition of fundamental error, this Court has described it in Archer v. State, 673 So.2d 17, 20 (Fla. 1996) as "'error which reaches down into the validity of the trial itself to the extent that a verdict of guilty could not have been obtained without the assistance of the alleged error.' State v. Delva, 575 So.2d 643, 644-45 (Fla. 1991) (quoting Brown v. State, 124 So.2d 481, 484 (Fla. 1960)" and in J.B. v. State, 705 So.2d 1376, 1378 (Fla. 1998) as error "which goes to the foundation of the case or the merits of the cause of action and is equivalent to the denial of due process. Johnson 616 So.2d [1] at 3." It cannot be plausibly maintained that not pronouncing individual components of statutorily mandated costs invalidates the sentencing proceeding or denies due process.

The wisdom of Maddox is that it eliminates the need to struggle with the uncertain meaning of fundamental error by holding that there are now remedies for **all** prejudicial sentencing errors, not merely fundamental, through contemporaneous objection, motion pursuant to rule 3.800(b) to correct sentence[1], and motion pursuant to rule 3.850 to claim

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[1]It deserves noting that rule 3.800 now contains three methods of challenging or modifying sentences in the trial court: 3.800(a) provides for challenging an illegal sentence at any time; rule 3.800(b) permits challenging a legal but erroneous sentence within thirty days of rendition; and rule 3.800(c) permits reduction and modification of a legal sentence within sixty days of rendition or within sixty days of judgment becoming

ineffective assistance of counsel if trial counsel overlooks any prejudicial error and fails to file a rule 3.800(b) motion within thirty days. The state urges in the most emphatic terms that no one can seriously suggest that defendants who are now provided with no less than three independent and mutually supportive due process remedies in the trial court to raise claims of sentencing error are also entitled, in the face of statutory and procedural law, to demand that the state also permit the claim to be raised for the first time on direct appeal. A right to a contemporaneous objection, a right to a motion to correct sentence within thirty days of rendition, and a right to claim ineffective assistance of counsel within two years of final judgment is due process to the ultimate degree. There is no denial of fundamental due process in requiring that defendants use trial court remedies readily available to them in raising claims of sentencing error. Maddox.

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final. Significantly, these remedies are only available in the sentencing court, not the appellate.

CONCLUSION

The decision of the district court should be affirmed and the certified question answered no.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing RESPONDENT'S ANSWER BRIEF has been furnished by U.S. Mail to Carol Ann Turner, Assistant Public Defender, Leon County Courthouse, Suite 401, 301 South Monroe Street, Tallahassee, Florida 32301, this 16th day of March, 1999.

James W. Rogers
Attorney for the State of Florida

[C:\Supreme Court\061500\94812b.wpd --- 6/15/00,1:00 pm]

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APPENDIX TO
RESPONDENT'S ANSWER BRIEF

A. Sassnett v. State, (Fla. 1st DCA, December 31, 1998)

B. Locke v. State, (Fla. 1st. DCA, October 21, 1998)