

In the Supreme Court of Florida

CASE NO. SC95,949

BRIAN McLEAN,

Petitioner/Appellant,

v.

THE STATE OF FLORIDA,

Respondent/Appellee.

ON DISCRETIONARY REVIEW OF A DECISION
OF THE FIRST DISTRICT COURT OF APPEAL

REPLY BRIEF OF PETITIONER TO SUPPLEMENTAL ANSWER BRIEF

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_____ /

PRELIMINARY STATEMENT

Citations in this brief to designate record references are as follows:

"R. __" — Record on Appeal (documents), Vol. I,
including transcript of sentencing (R.
178-192);

"T. __" — Transcript of trial proceedings, Vols. II through IV.

"SAB. __" — Appellee's Supplemental Answer Brief.

All cited references will be followed by the relevant page number(s). . All other citations will be self-explanatory or will otherwise be explained. Appellee, State of Florida, was the plaintiff below, and will be referred to as "appellee" or the "state." Appellant was the defendant below, and will be referred to as "appellant" or as the "defendant" or by name. All other citations will be self-explanatory or will otherwise be explained.

Pursuant to an Administrative Order of this Court dated July 13, 1998, counsel

certifies that this brief is printed in 14 point Times roman, a proportionately-spaced, computer-generated font.

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SUPPLEMENTAL ARGUMENT

ISSUE II

CHAPTER 95-184, WHICH ENACTED THE 1995 SENTENCING GUIDELINES UNDER WHICH PETITIONER WAS SENTENCED, HAS BEEN HELD CONSTITUTIONALLY INVALID IN ITS ENTIRETY; APPELLANT'S OFFENSE WAS COMMITTED WITHIN THE WINDOW OF INVALIDITY; AND THE INVALID LAW UNDER WHICH HE WAS SENTENCED INCREASED HIS SENTENCE AND RESULTED IN IMPOSITION OF A SENTENCE GREATER THAN THE MAXIMUM PERMITTED UNDER THE VALID 1994 SENTENCING GUIDELINES, THUS BEING FUNDAMENTAL ERROR.

Petitioner was sentenced under the 1995 sentencing guidelines using a 1995 scoresheet (Rule 3.991(a)), for offenses committed on April 16, 1997. Subsequent to the filing of the State's Supplemental Answer Brief, this Court decided *Trapp v. State*, No. SC96074 (Fla. June 1, 2000), holding that the window of invalidity of chapter 95-184 closed on May 24, 1997. Therefore, petitioner's offense, committed April 16, 1997, gives him standing to challenge his sentencing imposed pursuant to the constitutionally invalid guidelines. He should therefore be resentenced under the guidelines valid on the date of his offense, and this Court should disapprove the decision of the First Court of Appeal as to this issue.

CONCLUSION

Petitioner, BRIAN McLEAN, based on the foregoing, respectfully urges the Court to disapprove the decision of the District Court and to remand accordingly, and to grant such other relief the Court deems just and equitable.

August 28, 2000.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by delivery to James W. Rogers, Esq., Assistant Attorney General, Office of the Attorney General, The Capitol, Plaza Level, Tallahassee, Florida, and to the Appellant by U.S. Mail, first-class postage prepaid, on August 28, 2000.

FRED P. BINGHAM II