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PRELIMINARY STATEMENT

Respondent State of Florida was the Appellee in the District Court of Appeal (DCA) and will be referenced in this brief as Respondent or the state. Petitioner BRIAN K. EDMONDSON was the criminal appellant in the DCA and will be referenced in this brief as Petitioner or by proper name.

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

CERTIFICATE OF FONT AND TYPE SIZE

Counsel certifies that this brief was typed using Courier New 12 or larger.

STATEMENT OF THE CASE AND FACTS

The state accepts petitioner's statement of the case and facts.

SUMMARY OF ARGUMENT

The state agrees that there is direct and express conflict between the decision below and this Court's subsequent decision in Maddox v. State, 25 Fla. L. Weekly S367 (Fla. 11 May 2000) and that the case should be reversed and remanded for reconsideration in light of Maddox.

ARGUMENT

ISSUE

IS THERE DIRECT AND EXPRESS CONFLICT BETWEEN THE DECISION BELOW AND THIS COURT'S SUBSEQUENT DECISION IN MADDOX V. STATE, 25 FLA. L. WEEKLY S367 (FLA. 11 MAY 2000) AND SHOULD THIS COURT REVERSE AND REMAND FOR RECONSIDERATION IN LIGHT OF MADDOX? (Restated)

The Florida Legislature enacted the Criminal Appeal Reform Act of 1996 which prescribed in pertinent part that non-fundamental errors which were not properly preserved in the trial court could not be appealed or addressed on appeal. Ch 924, Florida Statutes (Supp. 1996). The Reform Act became effective 1 July 1996. This Court upheld and implemented the Reform Act effective 1 January 1997. Amendments to the Florida Rules of Appellate Procedure, 696 So.2d 1103 (Fla. 1996). See, e.g., Florida Rule of Appellate Procedure 9.140(b)(2) [A criminal may not appeal from a guilty or nolo plea except to challenge the subject matter jurisdiction of the trial court or unless an appealable issue is properly preserved in the trial court] and Florida Rule of Appellate Procedure 9.140(d) [No sentencing issue, without exception, may be raised on appeal if not preserved in the trial court]. The court in Maddox v. State, 708 So.2d 617 (Fla. 5th DCA 1998) applied the plain terms of rule 9.140(d)), more than two years after it became effective, by holding that no claims of sentencing error could be raised on appeal unless the claim had been properly preserved in the trial court.

This Court in Amendment to Florida Rules of Criminal Procedure 3.111(e), 3.800 and Florida Rules of Appellate Procedure 9.010(h), 9.140, and 9.600, 25 Fla. L. Weekly S37 (Fla. 12 November 1999) further amended the rules to accommodate the complete negligence of a trial counsel to preserve a sentencing error within thirty days of the sentencing order by permitting appellate counsel to file motions in the trial court challenging a sentence at anytime prior to the filing of the initial brief, i.e., months after the notice of appeal and vesting of jurisdiction in the appellate court. Thereafter, in Maddox v. State, 25 Fla. L. Weekly S367 (Fla. 11 May 2000), this Court approved in part and disapproved in part the district court decision in Maddox by retroactively suspending the operation of rule 9.140(d) by creating a window period between the effective date of the Reform Act, 1 July 1996, and this Court's subsequent amendments to the rules effective 12 November 1999 during which certain sentencing errors could be raised on appeal for the first time despite the procedural and statutory prohibitions against such practices.

The state continues to maintain that the approaches taken by the Fifth District Court of Appeal in its Maddox decision of requiring that members of The Florida Bar acting as defense counsel display at least a modicum of competency in carrying out their duties and the decision below of the First District in the instant case that non-prejudicial and unpreserved claims of sentencing error are not cognizable on appeal, are far wiser.

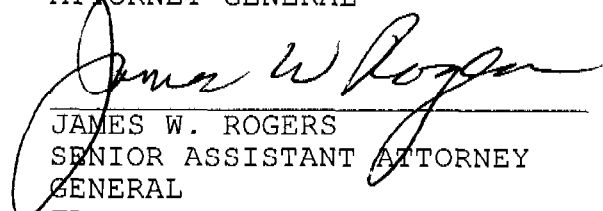
Nevertheless, the state agrees that the trial court action here occurred during the window period created by this Court in its Maddox decision and, thus, the decision of the district court below should be reversed and the cause remanded for reconsideration in light of Maddox.

CONCLUSION

The district court decision should be reversed and the cause remanded for reconsideration in light of this Court's subsequent decision in Maddox.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL



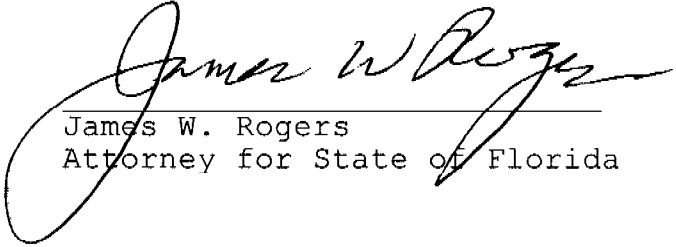
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing RESPONDENT'S ANSWER BRIEF has been furnished by U.S. Mail to Phil Patterson, Assistant Public Defender, Leon County Courthouse, Suite 401, 301 South Monroe Street, Tallahassee, Florida 32301, this 26th day of June 2000.


James W. Rogers
Attorney for State of Florida

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