ORIGINAL

IN THE SUPREME COURT OF FLORIDA

BRYAN K. EDMONDSON,

Petitioner,

v. Case No. **SC99-101**

STATE OF FLORIDA,

Respondent.
_____/

ON APPEAL FROM THE
FIRST DISTRICT COURT OF APPEAL

PETITIONER'S INITIAL BRIEF ON THE MERITS

NANCY A. DANIELS
PUBLIC DEFENDER

PHIL PATTERSON
ASSISTANT PUBLIC DEFENDER
FLORIDA BAR NUMBER **0444774**
LEON COUNTY COURTHOUSE
SUITE 401
301 SOUTH MONROE STREET
TALLAHASSEE, FLORIDA 32301
(850) 488-2458

ATTORNEY FOR PETITIONER

TABLE OF CONTENTS

TABLE OF CITATIONS

PRELIMINARY STATEMENT

This case comes to the Court on review from a decision of the First District Court of Appeal, Edmondson v. State, 745 So.2d 533 (Fla. 1st DCA 1999), which is attached to this brief as "Appendix."

Petitioner was the appellant in the district court and the defendant in the circuit court. He will be referred to in this brief as petitioner or by his proper name. The State of Florida was the prosecution in the trial court and the appellee in the district court. Respondent will be referred to herein as the state.

The record on appeal consists of six consecutively numbered volumes, and will be referred to in this brief by use of the symbol "V," followed by the appropriate volume and page numbers.

This brief is prepared in 12 point Courier New type.

All emphasis is supplied unless the contrary is indicated.

STATEMENT OF THE CASE AND FACTS

Petitioner was charged with burglary of a dwelling with assault upon an occupant, sexual battery with the use of force likely to cause serious personal injury, and kidnaping to facilitate burglary or sexual battery (V1-30).

The case was tried before a jury and petitioner was found guilty of each offense as charged (V1 60-61).

A guidelines scoresheet was prepared in anticipation of sentencing and, although petitioner had no prior criminal record, he scored 201 to 336 months (or 16.75 to 28 years) incarceration (V1-64).

The state argued that the court should impose a departure sentence based on emotional trauma and physical injury to the victim (V3 2545-257). Petitioner responded that the force used was no more than was necessary to commit the charged offense of sexual battery by the use of actual physical force likely to cause serious injury, and therefore, physical force could not support a departure sentence (V3-257). Petitioner also contested the evidence that the victim, Ms. Joers, suffered from severe emotional trauma and pointed out that she was not seeing a counselor and had never been prescribed medication for emotional problems (V3 257-260). Petitioner also asserted that any emotional problems Ms. Joers experienced were those normally experienced by victims of sexual battery with actual force likely

to cause serious personal injury, and disputed that emotional trauma was a valid reason for a departure sentence. Petitioner asserted that it was improper to depart for victim injury because victim injury had already been taken into account on the scoresheet, and because the state failed to present any expert testimony to verify that the emotional trauma experienced by Ms. Joers was more than was normally associated with being sexually battered with actual physical force likely to cause serious personal injury (V3 257-258).

The court overruled petitioner's objections and imposed a departure sentence of 50 years in prison on each count to be served concurrently (V3-265). The court orally pronounced that it was rendering a departure sentence because the victim experienced "excessive" emotional trauma (V3-263).

The trial judge never entered a written order setting out her reason(s) for imposing a departure sentence, and never attached portions of the sentencing transcript that explained her reasons for the departure sentence to the written sentencing order.

Notice of appeal was timely filed and the issue presented herein was raised before the First District Court of Appeal.

The district court rejected petitioner's claim as follows:

> Appellant argues that, because the trial court failed timely to file written reasons justifying its upward departure sentences, he is entitled to be resentenced pursuant to the sentencing guidelines. We disagree. Appellant

> correctly represents that the trial court did not timely file written reasons justifying its upward departure sentences. However, it is undisputed that the trial court did explain on the record at the sentencing hearing why it was imposing the departure sentences. Although appellant's counsel objected to the reasons announced by the trial court during the sentencing hearing, appellant does not challenge the sufficiency of those reasons on appeal. Appellant did not object in the trial court to the failure timely to file written reasons. Because the issue raised was never presented to the trial court, it was not preserved.

Edmondson v. State, supra.

Thereafter, petitioner invoked this Court's discretionary jurisdiction by asserting the decision of the First District Court of Appeal in this case was in direct and express conflict with the decision of another district court on the same legal question.

On May 22, 2000, this Court accepted jurisdiction of this case and directed the undersigned to file the instant brief on the merits.

SUMMARY OF ARGUMENT

Petitioner was tried and found guilty of three felony charges. His presumptive guidelines sentence was 201 to 336 months in prison. At sentencing, petitioner objected when the state urged the court to impose an upward departure sentence. Nevertheless, the court departed from the guidelines and sentenced petitioner to 50 years (600 months) in prison.

The trial judge neither filed written reasons for the upward departure sentence, nor attached to the sentencing order portions of the sentencing transcript that explained her departure reasons.

In Maddox v. State, infra, this Court discussed the policy reasons why written reasons were necessary to uphold a departure sentence. Citing Pope v. State, 561 So. 2d 5554 (Fla. 1990), the Court referred to the failure to timely file written reasons as a "sentencing error so important to the sentencing decision that the failure to timely file written reasons for departure resulted in the appellate court remanding for the imposition of a guidelines sentence."

This Court concluded in Maddox, infra, "that for defendants who did not agree to the imposition of a departure sentence in a plea agreement, the policy reasons for correcting a departure sentence in which the trial court failed to file statutorily required written reasons for departure are still applicable"

despite the adoption of Section 924.051, Florida Statutes, the so-called Appeals Reform Act.

Accordingly, on the authority of Maddox, infra, this issue was properly before the district court on direct appeal, notwithstanding the opinion of the First District Court to the contrary. Furthermore, on the authority of Pope v. State, infra, petitioner's departure sentence which was entered over timely objection and without the benefit of written reasons, must be vacated, and this cause must be remanded to the trial court for imposition of a guidelines sentence.

ARGUMENT

ISSUE I

THE DECISION OF THE FIRST DISTRICT COURT IN THIS CASE IS IN DIRECT AND EXPRESS CONFLICT WITH THIS COURT'S DECISION IN MADDOX V. STATE, 25 FLA. L. WEEKLY S367 (FLA. MAY 11, 2000), WHICH REAFFIRMED THE RULE THAT FAILURE TO FILE ANY WRITTEN REASONS FOR AN UPWARD DEPARTURE SENTENCE AFTER TRIAL REQUIRES THE ACCUSED TO BE RESENTENCED WITHIN THE APPLICABLE SENTENCING GUIDELINES.

In Maddox v. State, 25 Fla. L. Weekly S367 (Fla. May 11, 2000), this Court addressed the issue of whether failure to file written reasons justifying an upward departure sentence, when the accused makes a timely objection to the upward departure, can be properly raised on direct appeal.

The Court began its analysis by examining the policy reasons behind requiring the timely filing of written reasons for departure sentences. Referring to Florida Rule of Criminal Procedure 3.701(b) and Section 921.0016(1)(c), Florida Statues (1996), both of which require a sentencing court to provide timely written reasons in support of an upward departure sentence when that sentence exceeds the recommended guidelines range by twenty-five percent, this Court noted:

> Commencing with Pope v. State, 561 So. 2d 554 (Fla. 1990), we have consistently mandated that noncompliance with the statute and rules governing departure sentences should be addressed on direct appeal, even absent a contemporaneous objection. In Ree v. State, 565 So. 2d 1329 (Fla. 1990), this Court

explained that strict adherence to the requirement of a written order was required because a 'departure sentence is an extraordinary punishment that requires serious and thoughtful attention by the trial court.' We have also explained that written reasons for departure are statutorily required to enhance the uniformity of sentences. See Davis v. State, 661 So. 2d 1193, 1196 (Fla. 1995); Smith v. State, 598 So. 2d 1063, 1067 (Fla. 1992); State v. Jackson, 478 So. 2d 1054, 1056 (Fla. 1985). Further, we recognize that requiring written reasons for departure allows effective appellate review of the trial court's decision to depart. See e.g., Jackson, 478 So. 2d at 1056. In fact, we considered the correction of this type of sentencing error so important to the sentencing decision that the failure to timely file written reasons for departure resulted in the appellate court remanding for the imposition of a guidelines sentence. See Pope, 561 So. 2d at 554.

In the departure context, however, this Court distinguished between departure sentences following a trial and those based on a negotiated plea. A valid plea agreement constitutes clear and convincing grounds for the trial judge to impose a departure sentence. (Cites omitted.) We reasoned in Williams[1] that 'while it would be better form for a trial court to state in writing that the plea agreement is the reason for departure, the failure to do so does not invalidate a departure sentence imposed pursuant to a valid plea agreement.'

We conclude that for defendants who did not agree to the imposition of a departure sentence in a plea agreement, the policy reasons for correcting a departure sentence in which the trial court failed to file statutorily required written reasons for departure are still applicable following the Act.[2] We conclude that this statutory omission

---

[1] State v. Williams, 667 So. 2d 191 (Fla. 1996).

[2] The Appeals Reform Act, Section 924.051, Florida Statutes (1996).

> is an important one that affects the integrity of the sentencing process concerning the critical question of the length of the sentence. * * * However, we do not recede from our opinion in Davis[3] that precluded consideration of this type of error under 3.800(a) as an illegal sentence to be considered at any time.

Id. at S373-373.

In the case at bar, petitioner went to trial and was found guilty of various felony offenses. His presumptive guidelines sentence was 201 to 336 months in prison (V1-64). The court, over petitioner's objections, imposed a 600 month (50 year) sentence, which was an upward departure of 56% beyond the recommended guidelines range. The trial court neither submitted any written reasons for the excessive sentence, nor attached to the sentencing order portions of the sentencing transcript that explained the upward departure. Therefore, on the authority of Maddox v. State, supra, this Court must vacate the departure sentence imposed in this case and remand this cause to the lower court with directions that petitioner be resentenced within the applicable sentencing guidelines. See, Pope v. State, supra.

---

[3] Davis v. State, 661 So.2d 1193 (Fla. 1995), in which this Court held that a timely objection was required to preserve an attack on a departure sentence that was within the statutory maximum length of sentence.

CONCLUSION

Based on the foregoing argument, reasoning, and citations to authorities, this Court must vacate petitioner's departure sentence and remand this cause to the lower court with directions that he be resentenced within the applicable guidelines range.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY a copy of the foregoing has been furnished by U.S. Mail to **JAMES J. CARNEY**, Assistant Attorney General, 1655 Palm Beach Boulevard, West Palm Beach, FL 33401, and to petitioner, **BRYAN K. EDMONDSON**, #Q04271, Taylor Correctional Institution, Post Office Box 1728, Perry, FL 32348-1728, on this day, June 7, 2000.

Respectfully submitted,

NANCY DANIELS
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

PHIL PATTERSON
Fla. Bar No. **0444774**
Assistant Public Defender
Leon County Courthouse
Fourth Floor, North
301 South Monroe Street
Tallahassee, Florida 32301
(850) 488-2458
ATTORNEY FOR PETITIONER

IN THE SUPREME COURT OF FLORIDA

BRYAN K. EDMONDSON,

Petitioner,

v. Case No. **SC99-101**

STATE OF FLORIDA,

Respondent.
_____/

APPENDIX TO
PETITIONER'S INITIAL BRIEF ON THE MERITS