ORIGINAL

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC00-1082

PATRICK MATCHETT

Petitioner,

-vs-

STATE OF FLORIDA,

Respondent.

ON PETITION FOR DISCRETIONARY REVIEW FROM
THE DISTRICT COURT OF APPEAL, THIRD DISTRICT

BRIEF OF PETITIONER ON JURISDICTION

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CERTIFICATE OF TYPE SIZE AND STYLE

Undersigned counsel certifies that this brief was prepared using 14-point proportionately spaced Times New Roman type.

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INTRODUCTION

This is a petition for discretionary review on the basis of express and direct conflict of decisions, Petitioner, Patrick Matchett, was the defendant in the trial court and the appellant in the Third District Court of Appeal; the Respondent, State of Florida, was the prosecution in the trial court and the appellee in the Third District Court of Appeal. In this brief of petitioner on jurisdiction, all references are to the appendix attached to this brief, paginated separately and identified as "A", followed by the page numbers.

STATEMENT OF THE CASE AND FACTS

Mr. Matchett was convicted on four counts following a jury trial. (A. 2). On Count 2, the trial court imposed an upward departure sentence. (A. 2).

After the Third District Court of Appeal issued its decision in Mr. Matchett's appeal, Mr. Matchett filed a timely motion for rehearing. (A. 1). The Third District denied the motion for rehearing, but granted clarification of its original opinion, withdrew its original opinion, and issued another opinion in its place. (A. 1).

Before the Third District Court of Appeal, Mr. Matchett argued that the departure sentence had to be reversed because the trial court never filed a written order setting forth the basis for the upward departure. (A. 2). The Third District disagreed, holding that the "claim regarding the trial court's failure to file a written

order setting forth the basis for the upward departure sentence on count two is not preserved. See Weiss v. State, 720 So. 2d 1113, 1115 (Fla. 3d DCA 1998), review granted, 729 So. 2d 396 (Fla. 1999)." (A. 2).

SUMMARY OF ARGUMENT

This case is controlled by this Court's recent decision in *Maddox v. State,* Nos. 92805, 93000, 93207, and 93966, 2000 WL 565093 (Fla. May 11, 2000). There, the Court reaffirmed that defendants may raise fundamental sentencing errors on direct appeal. *Id.,* slip op. at 5,9, 12. The entire failure to file statutorily required written reasons for departure is fundamental error that requires remand for the imposition of a guidelines sentence, regardless of whether the error was preserved in the trial court. *Id.,* slip op. at 35-37.

The Third District's reliance upon *Weiss v. State* was misplaced because it ignored the crucial difference between *Weiss* and the instant case – in *Weiss* the written reasons for departure were filed, albeit three days late, while here written reasons for departure were never filed. As explained in *Maddox,* a late filing of written reasons for departure does not constitute fundamental error, slip op. at 38-39, while the total failure to file written reasons causes a "qualitative effect on the integrity of the sentencing process" and thus does constitute fundamental error which can be raised even in the absence of preservation. *Id.,* slip op. at 37-38.

ARGUMENT

THE DECTSTON BELOW EXPRESSLY AND DIRECTLY CONFLICTS WITH THIS COURT'S DECISION IN *Maddox v. State,* Nos. 92805, 93000, 93207, and 93966, 2000 WL 565093 (Fla. May 11, 2000); WITH THIS COURT'S DECISIONS IN *Pope v. State,* 561 So. 2d 554 (Fla. 1990), and *Ree v. State, 565 So.* 2d 1329 (Fla. 1990), BOTH OF WHICH WERE REAFFIRMED IN *Maddox;* AND WITH THIS COURT'S DECISION *IN Donaldson v. State, 722* So. 2d 177 (Fla. 1998).

In *Pope v. State,* 561 So, 2d 554 (Fla. 1990), this Court held that where there was a departure sentence with no written reasons, the appellate court "must remand for resentencing with no possibility of departure from the guidelines." *Id.* at *556.* In *Ree v. State, 565* So. 2d 1329 (Fla. 1990), this Court stressed the fundamental importance of written reasons for departure, explaining that "a departure sentence is an extraordinary punishment that requires serious and thoughtful attention by the trial *court." Id.* at 1332. In *Maddox,* this Court affirmed the holdings in *Pope* and *Ree,* concluding that passage of the Criminal Appeal Reform Act [section 924.05 1, Florida Statutes (Supp. 1996)] did not change the underlying policy reasons requiring the filing of written reasons for a departure sentence.

> 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. We conclude that this statutory omission is an important one that affects the integrity of the sentencing process concerning the critical question of the length of the sentence.

Maddox, slip op. at 36-37, 2000 WL 565093 at *17.

Here, the Third District did not recognize any difference between filing written reasons late and not filing written reasons at all. Instead, citing to its decision in *Weiss v. State,* 720 So. 2d 1113, 1115 (Fla. 3d DCA 1998), *review granted,* 729 So. 2d 396 (Fla. 1999), the Third District refused to grant Mr. Matchett relief because the claim concerning the trial court's failure to file written reasons for departure was not preserved. A. 2.

In *Weiss,* however, unlike here, written reasons for departure were filed. The argument in *Weiss* was that resentencing was required because the trial court filed written reasons for its departure three days later than allowed by statute. 720 So. 2d at 1114. The Third District held that, even if a "technical error" had occurred because of the late filing, it was not cognizable on appeal under the Criminal Appeal Reform Act because it was not preserved. *Id.* at 1115.

In *Maddox,* this Court approved the Third District's decision in *Weiss.* "We agree that when written reasons for imposing a departure sentence were filed late, this late filing does not constitute a fundamental sentencing error if the defendant

was not hindered in his or her efforts to challenge the grounds for imposing the departure sentence on direct appeal." *Maddox,* slip op. at 39, 2000 WL 565093 at "18.

As explained in *Maddox,* however, there is a significant difference between a case such as Weiss where written reasons were filed late and a case such as Mr. Matchett's where written reasons were never filed at all. "In our opinion, while there is a qualitative effect on the integrity of the sentencing process when the trial court fails to file any written reasons for imposing a departure sentence, this same concern is not present when the written reasons are filed late but within sufficient time for the defendant to file a motion to correct the sentence on this basis." *Maddox,* slip op. at 38, 2000 WL 565093 at * 18. The late filing of written reasons for departure is thus not fundamental error, while the failure to file any written reasons is fundamental error which requires a remand for imposition of a guidelines sentence. *Id.,* slip op. at 35-39, 2000 WL 565093 at *16-18. The Third District's failure to recognize this distinction puts its decision in Mr. Matchett's case in direct conflict with *Maddox* and the cases cited with approval in *Maddox,* namely *Pope* and *Ree.* The Third District's decision is also in direct conflict with this Court's holding in *Donaldson v. State,* 722 So. 2d 177 (Fla. 1998). "Where the trial judge fails to provide written reasons for the departure sentence, the

appellate court must reverse with instructions to resentence the defendant in accordance with the sentencing guidelines without possibility of departure." *Id.* at 189.

Finally, it does not matter that the claim regarding the trial court's failure to file written reasons for its departure was not preserved. This Court explicitly disagreed with that holding by the Third District when it disapproved, in *Maddox,* a similar holding by the First District in *Butler v. State,* 723 So, 2d 865 (Fla. 1st DCA *1998). See Maddox,* slip op. at 37 & n.15, 2000 WL 565093 at * 17. As explained in *Maddox,* "the failure to file any reasons for imposing a departure sentence constitutes a fundamental sentencing error that can be raised on direct appeal during the window period, even in the absence of preservation." *Id.,* slip op. at 37 n.15.[1]

CONCLUSION

Based on the foregoing facts, authorities and arguments, petitioner respectfully requests this Court to exercise its discretionary jurisdiction to review the decision of the Third District Court of Appeal and, upon review, to order the

[1] The "window period" refers to direct appeals filed between the effective date of the Criminal Appeal Reform Act in 1996 and the effective date of the recent amendment to rule 3.800. *Maddox,* slip op. at 3-4. Mr. Matchett's initial brief was filed on or about October 27, 1998, well within the window period.

case remanded to the trial court for imposition of a guidelines sentence on count two, in accordance with the decision in *Maddox.*

Respectfully submitted,

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CERTIFICATEOFSERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief of Petitioner on Jurisdiction will be hand-delivered to Roberta Mandel, Assistant Attorney General, Office of the Attorney General, Criminal Division, 444 Brickell Avenue, Suite 950, Miami, FL 33 13 1, on May 22, 2000.

Robert Godfrey
Robert Godfrey
Assistant Public Defender

IN THE SUPREME COURT
OF FLORIDA

DCA CASE NO.: 97-3248

PATRICK MATCHETT,

Petitioner,

-vs-

STATE OF FLORIDA

Respondent,

_____/

APPENDIX

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IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

THIRD DISTRICT

JANUARY TERM, A.D. 2000

PATRICK MATCHETT,

Appellant,

vs.

THE STATE OF FLORIDA,

Appellee.

CASE NO. 3D97-3248

LOWER TRIBUNAL NO. 91-20835

Opinion filed April 12, 2000.

An Appeal from the Circuit Court for Dade County, Marc Schumacher, Judge.

Bennett H. Brummer, Public Defender, and Lisa Walsh and Robert Godfrey, Assistant Public Defenders, for appellant.

Robert A. Butterworth, Attorney General, and Roberta G. Mandel, Assistant Attorney General, for appellee.

ON MOTION FOR REHEARING - DENIED

Before COPE, SHEVIN and SORONDO, JJ.

PER CURIAM.

We deny the Motion for Rehearing filed by the defendant on March 9, 2000, but grant clarification on our original opinion. Accordingly, this court's opinion filed March 8, 2000, in this case is withdrawn, and we issue the following opinion in its place.

Finding that the trial court committed no harmful error, we affirm the defendant's convictions for the crimes of first degree murder, armed robbery, aggravated assault and possession of a firearm while engaged in a criminal offense.

As concerns the defendant's claims of error as to his sentences, we find merit only in his claim that the trial court's final judgment and sentence incorrectly reflects his sentence on the charge of first degree murder as being life imprisonment without possibility of parole. The trial judge correctly pronounced the sentence as life imprisonment without possibility of parole for twenty-five years. Accordingly, we reverse defendant's sentence on this charge and remand to the trial court so that the written sentence will conform to the trial judge's oral pronouncement.

The defendant's claim regarding the trial court's failure to file a written order setting forth the basis for the upward departure sentence on count two is not preserved. See Weiss v. State, 720 So. 2d 1113, 1115 (Fla. 3d DCA 1998), review granted, 729 so. 2d 396 (Fla. 1999).

The state's cross-appeal is moot.

Reversed and remanded with instructions.