IN THE SUPREME COURT OF FLORIDA

CASE NOS. 00-2162

CARLOS MANDRI,

Petitioner,

-vs-

THE STATE OF FLORIDA,

Respondent.

ON PETITION FOR DISCRETIONARY REVIEW

BRIEF OF RESPONDENT ON THE MERITS

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INTRODUCTION

Petitioner, **CARLOS MANDRI,** petitions for discretionary review of a question certified as of great public importance by the Third District Court of Appeal. Petitioner was the Appellant in the district court and the Defendant in the trial court. Respondent, **THE STATE OF FLORIDA,** was the Appellee in the district court and the prosecution in the trial court. In this brief, the parties will be referred to as they appear before this Court. The symbol "R" refers to the record on appeal and the symbol "T" refers to the transcript of proceedings. All emphasis is supplied unless otherwise indicated.

CERTIFICATE OF TYPE SIZE AND STYLE

This brief is composed in 12 point Courier New type.

STATEMENT OF THE CASE AND FACTS

On February 25, 1999, a jury convicted Petitioner of attempted first degree murder with a firearm, two counts of aggravated assault on a law enforcement officer with a firearm and robbery with a firearm. (T. 783-784; R. 106-109). The court entered judgment in accordance with the verdict on that same date. (R. 117-118).

The court conducted Petitioner's sentencing hearing on April 6, 1999. (R. 126-168). At the conclusion of the hearing the court pronounced sentence on Petitioner. The court sentenced Petitioner to a guidelines departure sentence of concurrent life imprisonment for the attempted murder and armed robbery convictions and concurrent fifteen (15) years for the aggravated assault upon a law enforcement officer convictions. (R. 172-173). At that time the court stated as its reason for imposing the guidelines departure sentence:

> As to the attempted murder and the armed robbery in this case I find that Mr. Mandri brought threat of death to multiple and many people on the streets of Miami, Dade County at a time when there were people moving about freely; at a time when school children were going to lunch; when adults were taking lunch hour; when people were strolling on the streets at its busiest time one could find in South Miami, Florida. That is the time when they were exposed to the ricocheting bullets, to the car chases, to the shoot-out with the police. That is the time that was selected and put many, many people at risk and for this I will augment the sentencing guidelines and sentence Mr. Mandri to life in prison.

(R. 172). The trial court signed the sentencing order on April 6, 1999, and it was filed on April 23, 1999. (R. 113-116).

On May 3, 1999, Petitioner filed a motion to correct sentence in the trial court. (R. 119-121). As the basis for that motion, Petitioner argued that the trial court did not provide written reasons in support of the guidelines departure sentence within the time fixed by law and by the rules of criminal procedure. Petitioner sought to be resentenced within the sentencing guidelines. (R. 120).

The trial court conducted a hearing on Petitioner's motion on May 19, 1999. (R. 184-197). At that hearing, it was established that at the conclusion of the sentencing hearing, the court instructed the court reporter to file the transcript of the sentencing hearing as quickly as possible. (R. 191). It was also established that the transcript was filed on April 27th or 29th. (R. 187, 197). It was further established that the written order of sentence was filed on April 28th. (R. 188). The court, finding that Defendant suffered no prejudice resulting from the late filing of the transcript, denied the motion. In an abundance of caution, the court reduced to writing and filed its reasons as stated at the sentencing hearing. (R. 122-123). Defendant filed his Notice of Appeal on May 20, 1999. (R. 125).

On appeal, the Third District Court of Appeal, relying on *Maddox v. State,* 760 So. 2d 89 (Fla. 2000), affirmed Petitioner's

sentence. *Mandri v. State,* 767 So. 2d 523 (Fla. 3d DCA 2000). On rehearing, the court certified the following question as of great public importance:

> WHERE A TRIAL COURT FAILS TO FILE WRITTEN REASONS IN SUPPORT OF A GUIDELINES DEPARTURE SENTENCE BUT, THEREAFTER, IN RESPONSE TO A FLORIDA RULE OF CRIMINAL PROCEDURE 3.800(B) MOTION FILED BY DEFENDANT, DOES FILE WRITTEN REASONS JUSTIFYING THE DEPARTURE, IS DEFENDANT ENTITLED TO A REVERSAL AND A REMAND FOR A GUIDELINES SENTENCE, UNDER *MADDOX v. STATE* 760 So. 2d 89 (Fla. 2000)?

Mandri v. State, 767 So. 2d at 524.

ISSUE ON APPEAL

WHERE A TRIAL COURT FAILS TO FILE WRITTEN REASONS IN SUPPORT OF A GUIDELINES DEPARTURE SENTENCE BUT, THEREAFTER, IN RESPONSE TO A FLORIDA RULE OF CRIMINAL PROCEDURE 3.800(B) MOTION FILED BY DEFENDANT, DOES FILE WRITTEN REASONS JUSTIFYING THE DEPARTURE, IS DEFENDANT ENTITLED TO A REVERSAL AND A REMAND FOR A GUIDELINES SENTENCE, UNDER *MADDOX v. STATE* 760 So. 2d 89 (Fla. 2000)?

SUMMARY OF THE ARGUMENT

This Court should answer the certified question in the negative. Where the trial court fails to file written reasons in support of a guidelines departure sentence but, thereafter, in response to a motion to correct sentence filed by the defendant, does file written reasons justifying the departure, the defendant is not entitled to the reversal of his sentence and a remand for a guidelines sentence unless the defendant can demonstrate that he was prejudiced by the error.

In the instant case, Petitioner can demonstrate no prejudice resulting from the trial court's alleged failure to file its written reason for imposing the guidelines departure sentence. At the direction of the trial court, the transcript of the sentencing hearing wherein the court enunciated its reason for the departure was timely filed. Hence, the reasons were available for Petitioner to challenge on appeal. Further, even if the transcript is not considered as meeting the written reasons requirement, the written order filed at the hearing on Petitioner's motion was sufficient where it was filed in time for Petitioner to raise any challenge to the reason in his direct appeal.

Consequently, Petitioner was not prejudiced by the fact that the trial court entered its written reason in support of the departure sentence in response to Petitioner's motion to correct sentence. This Court should answer the certified question in the negative and affirm Petitioner's guidelines departure sentence.

ARGUMENT

A DEFENDANT IS NOT ENTITLED TO THE REVERSAL OF HIS SENTENCE AND REMAND FOR A GUIDELINES SENTENCE UNDER *MADDOX v. STATE* 760 So. 2d 89 (Fla. 2000) WHERE A TRIAL COURT FAILS TO FILE WRITTEN REASONS IN SUPPORT OF A GUIDELINES DEPARTURE SENTENCE BUT, THEREAFTER, IN RESPONSE TO A FLORIDA RULE OF CRIMINAL PROCEDURE 3.800(B) MOTION FILED BY DEFENDANT, DOES FILE WRITTEN REASONS JUSTIFYING THE DEPARTURE.

In *Maddox v. State,* 760 So. 2d 89 (Fla. 2000), this Court held that the Criminal Appeal Reform Act did not prevent the appellate court from addressing certain unpreserved sentencing errors on direct appeal. *Id.* at 94-95. This Court found that the trial court's failure to file written reasons in support of the departure sentence constitutes such fundamental error which may be corrected on direct appeal even if the error was not preserved in the trial court. *Id*. at 107.

The decision in *Maddox* concerned the ability to raise the issue on direct appeal, it did not address whether reversal was mandated. The Criminal Appeal Reform Act requires a showing of prejudicial error. The Act provides, in part:

> A judgment or sentence may be reversed on appeal only when an appellate court determines after a review of the complete record that prejudicial error occurred and was properly preserved in the trial court or, if not properly preserved, would constitute fundamental error.

§ 924.051(3), Fla. Stat (Supp. 1996). Although *Maddox* held that

the trial court's failure to file written reasons in support of the guidelines departure sentence constitutes fundamental error, it did not hold that such error was *per se* reversible error. Consequently, even in light of *Maddox*, under § 924.051(3), Petitioner is still required to demonstrate that the alleged error was prejudicial. For this reason, this Court should answer the certified question in the negative. Where the trial court fails to file written reasons in support of a guidelines departure sentence but, thereafter, in response to a motion to correct sentence filed by the defendant, does file written reasons justifying the departure, the defendant is not entitled to the reversal of his sentence and a remand for a guidelines sentence unless the defendant can demonstrate that he was prejudiced by the error.

section 921.0016(1)(c), Florida Statutes (1997), provides:

> (c) A state prison sentence which varies upward or downward from the recommended guidelines prison sentence by more than 25 percent is a departure sentence and must be accompanied by a written statement delineating the reasons for the departure, filed within 7 days after the date of sentencing. A written transcription of orally stated reasons for departure from the guidelines at sentencing is permissible if it is filed by the court within 7 days after the date of sentencing.

§ 921.0016(1)(c), Fla. Stat. (1997). Rule 3.703(30)(A), Florida Rules of Criminal Procedure (1997), provides, in part:

> Any departure sentence must be accompanied by a written statement, signed by the sentencing judge, delineating the reasons for departure.

> The written statement shall be filed in the court file within 7 days after the date of sentencing. A written transcription of orally stated reasons for departure articulated at the time sentence was imposed is sufficient if it is signed by the sentencing judge and filed in the court file within 7 days after the date of sentencing. The sentencing judge may also list the written reasons for departure in the space provided on the guidelines scoresheet and shall sign the scoresheet.

Rule 3.703(30)(A), Fla.R.Crim.P. The purpose for requiring the entry of written reasons is to make those reasons available to the defendant in deciding whether to challenge those reasons on appeal. *See e.g., State v. Lyles* 576 So. 2d 706 (Fla. 1991), *Ree v. State,* 565 So. 2d 1329 (Fla. 1990).

In the instant case, the trial court announced its reason for imposing the guidelines departure sentence at the conclusion of the sentencing hearing on April 6, 1999. The court stated:

> As to the attempted murder and the armed robbery in this case I find that Mr. Mandri brought threat of death to multiple and many people on the streets of Miami, Dade County at a time when there were people moving about freely; at a time when school children were going to lunch; when adults were taking lunch hour; when people were strolling on the streets at its busiest time one could find in South Miami, Florida. That is the time when they were exposed to the ricocheting bullets, to the car chases, to the shoot-out with the police. That is the time that was selected and put many, many people at risk and for this I will augment the sentencing guidelines and sentence Mr. Mandri to life in prison.

(R. 172). The court instructed the court reporter to file the transcript of the sentencing hearing as quickly as possible. (R.

191). The sentencing order was filed on April 23, 1999. (R. 113-116). The transcript was filed on April 27th or 29th. (R. 187, 197).

Petitioner filed his motion to correct sentence on May 3, 1999, contending that the trial court did not provide written reasons in support of the guidelines departure sentence within the time fixed by law and by the rules of criminal procedure. (R. 119-121). Petitioner argued that the transcript of the sentencing hearing did not satisfy the requirement of the rule because the transcript was not signed by the trial judge. At the conclusion of the hearing on Petitioner's motion, the trial court, finding that Petitioner suffered no prejudice resulting from the late filing of the transcript[1], denied the motion. In an abundance of caution, the court reduced to writing and filed its reason as stated at the sentencing hearing. (R. 122-123). Petitioner filed his notice of appeal on May 20, 1999. (R. 125).

The Criminal Appeal Reform Act permits reviewing courts to reverse a sentence only if they determine that the properly preserved error constitutes "prejudicial error." § 924.051(3), Fla.

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[1] The trial court was apparently under the impression that the time for filing the written reasons commenced with the oral pronouncement of sentence rather that when the written sentencing order is filed. In *Weiss v. State,* 761 So. 2d 318, 319 (Fla. 2000), this Court declined to resolve whether the time for filing the written reasons commenced at oral pronouncement of the sentence or when the written sentence is filed.

Stat. (Supp. 1996). To constitute prejudicial error, the error in the trial court must harmfully affect the sentence. § 924.051(1)(a), Fla. Stat.

> The theory of requiring the entry of written reasons was to allow the written reasons to be available to the defendant in deciding to take an appeal. *See Lyles* 576 So. 2d at 708. [f.o.] Here the oral reasons were pronounced on the date of sentencing. The nearly verbatim typed order was filed twenty-two days later. The notice of appeal was filed one week after that. The appeal attacks both the timeliness and substance of the departure order. This record reveals no prejudice to the defendant: the defendant filed a timely appeal, and in his appeal he challenges the departure order. The delay in filing of the departure order must be treated as harmless error. [f.o.].

Jordan v. State, 728 So. 2d 748, 753 (Fla. 3d DCA 1998), *approved* 761 So. 2d 320 (Fla. 2000). In *Maddox v. State*, *supra.*, this Court found that the failure to file timely reasons for imposing an upward departure sentence does not constitute fundamental 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 v. State*, 760 So.2d at 108. *See also, Weiss v. State,* 761 So. 2d 318 (Fla. 2000),*approved,* 761 So. 2d 318 (Fla. 2000), *Jordan v. State*, *Supra.*

In the instant case, Petitioner suffered no prejudice resulting from the late filing of the written reasons in support of the departure sentence. The written reasons were available in time

for Petitioner to raise any challenge to the validity of those reasons in his direct appeal. Indeed, Petitioner makes no claim that the trial court's reason is invalid. Instead, Petitioner contends that he is entitled to be resentenced within the sentencing guidelines because the trial court did not file the written reasons for the departure until after he filed his motion to correct sentence.

According to Petitioner's argument, the fact that the court did not file the written reason until after he filed his motion to correct sentence, mandates a finding that no written reason was filed rather than that the reason was filed late. Petitioner ignores the fact that the transcript of the sentencing hearing wherein the court enunciated its reason supporting the departure sentence was filed at the direction of the trial court. The sentencing order was filed on April 23, 1999. (R. 113-116). The transcript was filed on April 27th or 29th, within seven days after the written sentencing order was filed. (R. 187, 197). The fact that the transcript was not signed by the trial judge did not render the transcript a nullity.

> [T]he [Criminal Appeal] Reform Act has--we think, quite salutarily--rendered the general harmless error statute, section 924.33, Florida Statutes (1997); see § 59.041, Fla. Stat. (1997), unequivocally applicable to alleged sentencing miscues such as the one now urged upon us. It was always difficult, at best, to discern a rational justification for setting aside an otherwise appropriate sentence just because a piece of paper was

> filed immaterially late. The legislature has now expressly precluded such a result.

Weiss v. State, 720 So.2d at 1115. (citation omitted). Clearly, then, under the Criminal Appeal Reform Act, Petitioner is not entitled to be resentenced simply because the transcript did not contain the judge's signature where Petitioner can demonstrate no prejudice in his ability to prosecute his appeal.

Nevertheless, even if the transcript of the sentencing hearing is disregarded, Petitioner is not entitled to be resentenced within the sentencing guidelines because the written reason was filed in response to Petitioner's motion to correct sentence. As indicated above, the reason of requiring written reasons in support of the departure sentence is to allow the defendant to challenge those reasons on appeal. In the instant case, Petitioner does not contend that he was prejudiced in his ability to prosecute his appeal. Instead, Petitioner argues that precedent from this Court, such as *Pope v. State,* 561 So. 2d 554 (Fla. 1990) and *Ree v. State,* 565 So. 2d 1329 (Fla. 1990), mandates resentencing within the guidelines because the written reason was not filed until after he filed his motion to correct sentence.

Pope and *Ree,* held that were a departure sentence is reversed because there were no written reasons for departing, the defendant must be resentenced within the sentencing guidelines. However, those cases were decided before the enactment of the Criminal Appeal Reform Act. As argued above, the Act requires a showing of

prejudice before a sentence can be reversed. Indeed, in *Weiss v. State,* the Third District Court of Appeal recognized that the Act was meant to, and in fact, overruled such cases as *Ree v. State. Weiss v. State,* 720 So. 2d at 1115 fn 4. Hence, Petitioner still has to demonstrate that he was prejudiced by the trial court's failure to file the written reasons until after he filed his motion to correct sentence.

Thus, because Petitioner can demonstrate no prejudicial error in support of his appeal, this Court should answer the certified question in the negative and affirm Petitioner's guidelines departure sentence.

CONCLUSION

Based upon the foregoing argument and cited authorities, this Court should answer the certified question in the negative and affirm Defendant's sentencing guidelines departure sentences.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief of Appellee was furnished by mail to, Lisa Walsh, Esq., Assistant Public Defender, 1320 N.W. 14th Street, Miami, Florida 33125, on this 18th day of April 2001.

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