ORIGINAL

IN THE SUPREME COURT OF FLORIDA

CHARLES EDWARDS

Petitioner,

v. CASE NO. SC00-443

STATE OF FLORIDA,

Respondent.

INITIAL BRIEF OF PETITIONER ON THE MERITS

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TABLE OF CONTENTS

TABLE OF CITATIONS

IN THE SUPREME COURT OF FLORIDA

CHARLES EDWARDS,	:	
Petitioner,	:	
VS.	:	CASE NO. SC00-443
STATE OF FLORIDA,	:	
Respondent.	:	
	:	

INITIAL BRIEF OF PETITIONER ON THE MERITS

I PRELIMINARY STATEMENT

This is an appeal from the decision of the First District Court of Appeal. Edwards v. State, 748 So.2d 1106 (Fla. 1st DCA 2000). In a per curiam affirmance, the court cited Collins v. State, 732 So.2d 1149 (Fla. 1st DCA 1999), which this court has recently reversed, 25 Fla. L. Weekly S367 (no. SC 95,869) (Fla. June 22, 2000) on the authority of Maddox, infra.

Petitioner Edwards was convicted at jury trial of sexual battery. All proceedings were held in Leon County before Circuit Judge Charles McClure.

The one-volume record on appeal will be referred to as "R"; the one-volume trial transcript as "T"; the one-volume supplemental record as "Supp," and the second supplement (the complete scoresheet) as "Supp2."

II STATEMENT OF THE CASE

Petitioner, Charles Edwards, was charged by information filed July 9, 1997, in Leon County, with slight force sexual battery, which allegedly occurred February 17, 1997 (R 12).[1]

At trial July 29, 1998, before Judge McClure, appellant's motion for judgment of acquittal was denied (T 126-27). The jury found him guilty as charged (R 70).

October 22, 1998, Edwards was sentenced to 14 years, 7 months in prison, with credit for time served of 504 days (R 77-81). Court costs were waived (R 83). Edwards also pleaded no contest to some other charges and received concurrent sentences (Supp 9-11,18). His presumptive guidelines sentence was 101.2 to 168.7 months (8.4 to 14.05 years) in prison, even though he had virtually no criminal record (Supp2).

Notice of appeal was timely filed November 13, 1998 (R 91).

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[1]The information at R 12 of the record states no name for the alleged victim, apparently due to the order not to disclose her name. The confidential information - R 56 - lists her initials as "T.B."

III STATEMENT OF THE FACTS

Because only sentencing issues are being raised in this court, undersigned counsel will briefly summarize the facts at trial: This case involved an alleged "date rape," where petitioner, Charles Edwards, and the alleged victim, T.B., were both students at Florida A&M University. Although it is not clear whether their relationship could be described as dating, Edwards visited T.B. at her dorm, and she visited him in his apartment (T 34-37).

While T.B. engaged in behavior which arguably sent a mixed message to Edwards - for example, she took off her shirt, or allowed him to take off her shirt, while he was giving her a massage on the bed in the dark (T 42-43,45), she ultimately testified that she did not consent to sex.

Edwards testified that he and T.B. had previously engaged in consensual sex (T 130-31,134-35) and did so again on the night in question (T 139). That night, T.B. found out Edwards had a girlfriend; she asked him to give up the girlfriend; he said he couldn't do that (T 141).

In order to avoid having his girlfriend discover that he was seeing someone else, Edwards had used a false name - "Tony" - from the time he first met T.B. He led the police to believe for a few months that "Tony" was someone else, until the police figured out that he was "Tony."

The jury convicted Edwards of sexual battery. He had virtually no prior criminal record.

III SUMMARY OF ARGUMENT

This court has already decided the principles which apply to petitioner, Charles Edwards, in the two issues raised here.

Issue I: The trial court exceeded the sentencing guidelines without entering a written departure order. In Maddox and Collins, infra, this court held the trial court's failure to enter written reasons for departure was fundamental error, which could be raised for the first time on appeal.

Issue II: Heggs, infra, held the 1995 amendments to the sentencing guidelines violated the single-subject rule, which entitles as a matter of fundamental error the applicable class of defendants to be resentenced under the 1994 guidelines. Edwards' offense comes within the Heggs window, and the sentence imposed is a departure from the 1994 guidelines, thus he is entitled to be resentenced.

IV ARGUMENT

ISSUE I

THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN DEPARTING UPWARD FROM THE SENTENCING GUIDELINES WITHOUT ENTERING A WRITTEN DEPARTURE ORDER.

This court has already decided the principle at issue in the instant case. Apparently through an inadvertent error, the trial court exceeded the maximum guidelines sentence by several months. The sentence was not supported by written reasons for departure.

Where there was no objection, the First District held the failure to enter a written departure order was not preserved for appeal and not fundamental error. Collins, supra. The district affirmed the instant case per curiam, with a cite to Collins. Edwards, supra. This court overruled Collins and held in Maddox v. State, 25 Fla. L. Weekly S367, ____ So.2d ____ (Fla. May 11, 2000), and Collins v. State, 25 Fla. L. Weekly S500, ____ So.2d ____ (Fla. June 22, 2000), that the failure to enter a written departure order is fundamental error which can be raised for the first time on appeal.

Petitioner, Charles Edwards, was sentenced before this court created Rule 3.800(b)(2). Amendments to Florida Rules of Criminal Procedure 3.111(e) and 3.800 and Florida Rules of Appellate Procedure 9.020(h), 9.140, and 9.600, 24 Fla. L. Weekly S530 (Fla. Nov. 12, 1999), *revised on rhg*, 25 Fla. L. Weekly S37 (Fla. Jan. 13, 2000). Thus, his case is within the applicable window.

Edwards was sentenced to 14 years, 7 months in prison, which exceeded, apparently through an error, the maximum guidelines sentence by several months. His presumptive guidelines sentence was a range of 101.2 to 168.7 months (8.4 to 14.05 years) in prison, even though he had virtually no criminal record (Supp2).

The prosecutor told the judge that the maximum guidelines sentence was 168.7 months, "which comes out to be. . .14 years and **point** 7 months," and that is the sentence the state recommended (Supp 17). The court then orally imposed sentence of 14.7 years (Supp 18), which was written as 14 years, 7 months (R 79). The maximum guidelines sentence was 14.05 years, and .05 year is 18.25 days. The 6-1/2 month difference between 18.25 days and 7 months exceeds the guidelines without written reasons.

There was no objection to the departure, because reading the sentencing as a whole, no one - not defense counsel, prosecutor or judge - **recognized** the error. However, as noted above, this court has held in Maddox and Collins that a departure sentence without written reasons, unless agreed to as part of a plea bargain, is fundamental error.

Moreover, this case belongs to a tiny subset of facially-apparent sentencing errors, in that it appears the error was inadvertent and unintended. The error arose because the judge mistook .7 as the fraction of a **year**, when it was the fraction of a **month**. As a result of this error, the court imposed a

fractional sentence of 7 months, when it should have imposed a fractional sentence of **.7** month. This could be characterized as either a scoresheet error, or as an error in translating the scoresheet calculation into the actual sentence imposed.

Even after the Criminal Appeal Reform Act of 1996 (CARA), a facially-apparent scoresheet error remains cognizable for the first time on direct appeal. State v. Whitfield, 487 So.2d 1045 (Fla. 1986); Rule 3.800(a), Fla.R.Crim.P. Rule 3.800(a) was never amended in the aftermath of the CARA, nor has this court receded from Whitfield.

This court should reverse Edwards' sentence and remand for resentencing within the guidelines. However, as discussed in *Issue II*, the guidelines have changed.

ISSUE II

PETITIONER IS ENTITLED TO BE RESENTENCED UNDER HEGGS V. STATE.

This court has also previously decided the principle which applies to petitioner Edwards in this issue. In Heggs, this court held that the 1995 amendments to the sentencing guidelines violated the single-subject rule, and thus were unconstitutional, until the biennial reenactment of the statutes. Heggs v. State, 759 So.2d 620 (Fla. 2000). This ruling entitled every defendant whose sentence was a departure from the 1994 guidelines to resentencing as a matter of fundamental error. Heggs. The Heggs window opens October 1, 1995 and closes May 24, 1997. Trapp v. State, 25 Fla. L. Weekly S429, ____ So.2d ____ (Fla. June 1, 2000). Edwards' crime was committed in February, 1997, thus his conviction comes within the Heggs window, and he is entitled to be resentenced on this separate ground.

The following chart compares Edwards' score under the 1995 version of the guidelines scoresheet, under which he was sentenced (Supp2), with the 1994 guidelines, under which he should have been sentenced, per Heggs:

	1995	1994
primary offense, level 8	74	74
additional offenses, level 2 x 7	8.4	8.4
misd x 3	.6	.6
victim injury, penetration	80	40
prior record	0	0
TOTAL POINTS	163	123

The **1995** guidelines call for a sentence from 101.2 to 168.7 months (8.4 to 14.05 years) in prison, while the **1994** guidelines call for a sentence from 71.25 to 118.75 months (5.93 to 9.89 years) in prison.

Since the maximum sentence Edwards could get under the 1994 guidelines was 9.89 years, his 14 plus-year sentence is illegal under Heggs and he must be resentenced.

VI CONCLUSION

Based upon the foregoing argument, reasoning, and citation of authority, petitioner requests that this Court reverse petitioner's sentence and remand for resentencing to a guidelines sentence in accordance with Maddox and Heggs, supra.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to James W. Rogers, Assistant Attorney General, by delivery to The Capitol, Plaza Level, Tallahassee, Florida, this 7 day of August, 2000.

KATHLEEN STOVER