

IN THE SUPREME COURT OF FLORIDA

CASE NO. 00-933

CHARLES L. BRYANT,

Petitioner,

-vs-

STATE OF FLORIDA,

Respondent.

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**REPLY BRIEF OF PETITIONER ON THE MERITS**

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

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## STATEMENT OF THE CASE AND FACTS

Mr. Bryant makes the following corrections and additions to the Statement of the Case and Facts contained in the Respondent's Brief on the Merits (R.B.).

The state asserts that the court reporter's transcript of the sentencing proceeding was filed in the trial court twelve days after sentencing, on December 14, 1998. (R.B., 10, 16, 17). Although the court reporter's certificate indicates **transcription** of the sentencing hearing on December 14, 1998, (Supp. T/34), the transcript was **not filed** in the court file until June 13, 2000, more than eighteen months after sentence was imposed, in connection with Mr. Bryant's Pro Se Motion to Correct Sentence. (S.R. 1-35). Therefore, the state's contention that Mr. Bryant was not prejudiced by the trial court's failure to comply with the 7-day rule, because a transcript of the oral reasons was filed "fifteen days prior to Petitioner's notice of appeal on December 29, 1998" (R.B., p. 17), is patently untrue.

Furthermore, the state omits to mention that the late-filed transcript of the trial court's orally articulated departure reasons was unsigned.

## ARGUMENT

### I.

THE TRIAL COURT'S FAILURE TO ENTER A WRITTEN ORDER SUPPORTING THE DEPARTURE SENTENCE REQUIRES THAT THE DECISION OF THE THIRD DISTRICT COURT OF APPEAL BE REVERSED AND THE CASE BE REMANDED FOR FURTHER PROCEEDINGS IN LIGHT OF *MADDOX V. STATE*, 760 SO.2D 89 (Fla. 2000) AND *BUTLER V. STATE*, 761 SO.2D 319 (Fla. 2000).

The state's reliance on the written transcription of the trial court's orally articulated departure reasons, in lieu of a written order, is unavailing. Rule 3.703(30)(A) provides a trial judge with three methods for complying with the requirement that written reasons follow the oral articulation of reasons for departure at the time of sentencing. (1) The trial judge may file a "written statement, **signed by the sentencing judge**, delineating the reasons for departure." (2) The trial judge may file "[a] written transcription of orally stated reasons for departure articulated at the time [of] sentence. . . **if it is signed by the sentencing judge.**" (3) The trial judge may "list the written reasons for departure in the space provided on the guidelines scoresheet and **shall sign the scoresheet.**" Rule 3.703(30)(A), Florida Rules of Criminal Procedure (1997)(e.s.). The written transcription of orally stated departure reasons was not signed by the trial judge. Nor did the trial judge create or sign a written statement of departure reasons, or list written reasons for departure on a signed scoresheet. There is therefore no written or signed order for an upward departure sentence in this case.

The trial court's failure to sign the transcription of the oral reasons given for departure at the time of sentencing was "not a mere scrivener's error." *Carridine v. State*, 720 So.2d 818, 818 (Fla. 4<sup>th</sup> DCA 1998). The *Carridine* court reversed an upward departure sentence and remanded for resentencing within the guidelines where the trial court had "inadvertently neglected to sign" the sentencing guidelines scoresheet, which contained a completed checklist identifying the trial court's bases for departure. *Id.* This result was compelled by this Court's decision in *Ree v. State*, 565

So.2d 1329, 1332, which required strict adherence to the procedural requirements of the rule because “a departure sentence is an extraordinary punishment that requires serious and thoughtful attention by the trial court,” and *State v. Colbert*, 660 So.2d 701 (Fla. 1995), which warned that “one wrong move” in adhering to these requirements could be fatal to a departure sentence. *Id.*, at 820. *Accord*, *Cauble v. State*, 1997 WL 912913 (Fla. 2d DCA 1997) (upward departure sentence reversed where, as here, written transcription of trial court's oral statement of reasons for departure was unsigned); and *Wilcox v. State*, 664 So.2d 55, 56 (Fla. 5<sup>th</sup> DCA 1995) (in view of rule requiring “some form of writing, and the judge's signature,” failure to write reasons for departure, or sign sentencing transcript, or list reasons on signed guidelines scoresheet required remand for resentencing within guidelines). The requirement of a written, signed order in a prescribed form is designed to ensure the “serious and thoughtful attention of the trial court” when it imposes an “extraordinary punishment.” *Ree*. The trial court in this case complied with none of the statutorily-prescribed methods for writing a departure order.

In *Maddox v. State*, 760 So.2d 89, 106-08 (Fla. 2000), this Court held that the failure to file statutorily required written reasons for departure “is an important [omission] that affects the integrity of the sentencing process concerning the critical question of the length of the sentence,” and constitutes fundamental error which may be raised for the first time on appeal. Because no statutorily required written reasons

for departure were filed in this case, the integrity of the sentencing process was undermined, and the case must be remanded for resentencing within the guidelines, pursuant to *Ree v. State, supra*, even in the absence of contemporaneous objection.

The state cites *Butler v. State*, 723 So.2d 865 (Fla. 1<sup>st</sup> DCA 1998), *quashed* 761 So.2d 319 (Fla. 2000) for the proposition that where, as here, the trial judge orally articulates reasons for departure, and the defendant does not object to the failure to file written reasons, the error is not fundamental, because the defendant cannot show prejudice. (R.B., p. 18). The state apparently overlooked the fact that this Court quashed the decision of the district court, for reasons stated in *Maddox*. In *Maddox*, this Court noted that appellant Butler had objected below only to the sufficiency of the reasons orally given by the trial court, but not to the trial court's failure to write reasons for the departure sentence. *Maddox*, 760 So.2d at 107, n. 15. "Nonetheless," this Court concluded, "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.* On remand, the district court, "constrained by *Maddox* to reverse the departure sentence because no written reasons were filed," directed the trial court to impose a guidelines sentence. *Butler v. State*, 765 So.2d 274 (Fla. 1<sup>st</sup> DCA 2000). This case is indistinguishable from *Butler*: the trial court orally articulated reasons for departure at the time of sentencing, and Mr. Bryant objected to the sufficiency of these reasons, but not to the trial court's



failure to file a written order. The failure to file a written order constitutes fundamental error, under *Maddox* and *Butler*, and requires resentencing under the guidelines.

Finally, the state takes the position that the trial court's late filing of the written transcript was not prejudicial, and was not therefore fundamental error, citing *Jordan v. State*, 728 So.2d 748 (Fla. 3d DCA 1998), *affirmed*, 761 So.2d 320 (Fla. 2000), in which written reasons were filed three days late; and *Weiss v. State*, 720 So.2d 1113 (Fla. 3d DCA 1998), *affirmed*, 761 So.2d 318 (Fla. 2000), in which written reasons were filed 22 days late. In *Maddox*, this Court distinguished, for the purpose of fundamental error, between cases in which no written reasons were filed and cases such as *Jordan* and *Weiss*, in which written reasons were filed late, but "within sufficient time for the defendant to file a motion to correct the sentence on this basis." *Maddox*, 760 So.2d at 107. Although the state has asserted in its Brief that the trial court's transcription was filed on December 14, 1998, fifteen days before the Notice of Appeal was due, (R.B. 10, 16, 17), it was not in fact filed in the trial court until June 13, 2000, nearly eighteen months after the Notice was due.<sup>1</sup> (S.R. 1-34). Because, unlike *Jordan* and *Weiss*, the late filing "hindered [Mr. Bryant's] efforts to challenge

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The transcripts of sentencing hearings are nearly invariably filed in the court file, at some point after sentencing. If the state could rely on the mere filing, at some indeterminate time, of a sentencing transcript, to show compliance with Rule 3.703, Fla.R.Crim.P., the rule would have no meaning whatsoever.

the grounds for imposing the departure sentence on direct appeal,” *Maddox*, 760 So.2d at 107, the late filing comprises a second fundamental error.

The trial court’s failure to file written reasons, or to list written reasons in a signed sentencing guidelines scoresheet, or to sign its sentencing transcript, or to file a signed sentencing transcript within sufficient time to allow Mr. Bryant to challenge it constitutes fundamental error under *Maddox*.

## CONCLUSION

Based on the foregoing arguments and authorities, Mr. Bryant submits that his sentence must be vacated and remanded for resentencing within the guidelines. Res

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## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered by fax, (954) 712-4761, to the Office of the Attorney General, Criminal Division, 110 S.E. 6<sup>th</sup> Street, 9<sup>th</sup> Floor, Ft. Lauderdale, Florida 33301, on this 5th day of March, 2001.

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Assistant Public Defender

## **CERTIFICATE OF FONT**

Undersigned counsel certifies that the type used in this brief is 14 point proportionately spaced Times New Roman.

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Assistant Public Defender