IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. SC02-713

STATE OF FLORIDA,

Petitioner,

vs.

EDWARD T. PARTLOW,

Respondent.

RESPONDENT'S ANSWER BRIEF ON THE MERITS

KATHLEEN COOPER GRILLI, ESQ.
Florida Bar No. 727199
Law Offices of
Kathleen Cooper Grilli
2455 Hollywood Blvd.
Hollywood, Florida 33020
Telephone: (954) 453-1177
Facsimile: (954) 443-3745

Counsel for Respondent

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PRELIMINARY STATEMENT

Respondent was the Defendant and Petitioner was the prosecution in the Criminal Division of the Circuit Court for the Seventeenth Judicial Circuit, in and for Broward County, Florida. Respondent was the Appellant and Petitioner was the Appellee in the Fourth District Court of Appeal. In this brief, the parties shall be referred to as they appear before this Honorable Court.

The following symbols will be used in this brief:

R = Record on Appeal

T = Transcript of the hearing on the motion to withdraw plea.

References to the transcript will include the symbol and page number.

STATEMENT OF THE CASE AND FACTS

The Respondent pled guilty to a sexual offense without being advised of the sex offender registration requirement. He was sentenced on the same date that he entered his plea. Within days of the plea and sentencing hearing, the Respondent filed a motion to withdraw his guilty plea, stating that his plea was involuntary and that he was not properly advised of the consequences of his plea. (R. 93). After conducting a hearing on the motion, the trial court entered an order denying the motion to withdraw the plea. (R. 95). Respondent appealed.

The Fourth District Court of Appeal reversed the lower court's ruling, finding that *State v. Stapleton*, 764 So. 2d 886 (Fla. 4th DCA 2000) governed the legal issues. The Fourth District held that the Respondent "should have been advised of the known consequences of his plea at the time of taking the plea," *Partlow v. State*, 813 So. 2d 999 (Fla. 4th DCA 2002), and since he lacked knowledge of the registration requirements, he should have been permitted to withdraw his involuntary plea.

In so doing, the Fourth District expressly disagreed with the holding in *Nelson v. State*, 780 So. 2d 294, 295 (Fla. 1st DCA 2001), that the registration requirement was a collateral consequence of the plea and the "denial of the motion to

withdraw plea did not result in manifest injustice" where the defendant was not advised of these collateral consequences. In the instant case, the Fourth District certified the conflict with the holding in *Nelson*.

SUMMARY OF THE ARGUMENT

The Fourth District Court of Appeal correctly determined that the Respondent's plea was involuntary and that the trial court's order denying his motion to withdraw plea should be reversed. The court's opinion was not based on an misapplication of Rule 3.170 (f), but rather upon a correct application of the requirements of Rule 3.172(a). An examination of the precedent upon which the Fourth District relied in arriving at its opinion in this case establishes that the opinion was based upon well established principles of law. Accordingly, this Court should affirm the Fourth District Court's ruling.

ARGUMENT

THE FOURTH DISTRICT CORRECTLY APPLIED THE LAW AND THE RULES OF CRIMINAL PROCEDURE WHEN IT DETERMINED THAT THE LOWER COURT'S DENIAL OF THE MOTION TO WITHDRAW PLEA SHOULD BE REVERSED

The Fourth District Court of Appeal correctly determined that the Respondent's plea was void because it was involuntary. Contrary to the State's assertions, its opinion was not based

upon an incorrect application of Rule 3.170(f), Fla.R.Crim.P., but rather founded upon well established principles in Florida law concerning the voluntariness of pleas and consistent with this Court's and its own prior decisions.

To understand the reasoning of the Fourth District in the instant case, it is important to examine that court's holding in *State v. Stapleton*, 764 So. 2d 886 (Fla. 4th DCA 2000). In *Stapleton,* the Fourth District recognized that its prior precedent, specifically *State v. Pearman*, 762 So. 2d 739 (Fla. 4th DCA, 2000), held that the Jimmy Ryce Act and reporting requirements are collateral consequences of a plea "such that the trial court need not inform defendant of either before accepting a plea as voluntary." The court went on to note, however, several factors which distinguished *Stapleton* from *Pearman*.

> First, Stapleton filed his motion within thirty days of his sentence **in accordance with Florida Rule of Criminal Procedure 3.170(l).** Accordingly, this challenge was not a collateral attack on the conviction. *Padgett v. State*, 743 So. 2d 70 (Fla 4th DCA 1999). Pearman on the other hand had moved years after his sentencing to withdraw his 1995 plea as involuntary. Second, at the time Stapleton entered his plea, the Jimmy Ryce Act and section 943.0435 were already in effect, the opposite being the situation in *Pearman*.

Id. at 887-888 (emphasis added).

As the State correctly notes, the Fourth District relied

upon the holding in *Stapleton*, in arriving at the decision in the instant case. In the *Partlow* opinion, however, the court further elaborated upon its reasoning for determining that the plea should be withdrawn. The crux of its holding was not, as the State argues, the requirements of Rule 3.170(f), but rather the voluntariness of the plea and the requirements of Rule 3.172 (a), Fla.R.Crim.P. That rule states, in pertinent part, that "[b]efore accepting a plea of guilty or nolo contendere, the trial judge shall be satisfied that the plea is voluntary..." In considering the matter, the Fourth District stated

> As we implicitly held in *Daniels*, the real issue is whether a plea to a sexual crime lacking advice of the registration requirement may with any confidence be thought sufficiently informed -- and therefore **genuinely voluntary** that a trial judge could rightfully refuse to allow it to be withdrawn so soon after the plea was made. Just as we did in *Daniels* and *Stapleton*, we say no and direct the trial court to allow that the plea be withdrawn.

Partlow, 813 So. 2d 999, 1000. (Emphasis added).

The Fourth District's reliance upon *State v. Daniels,* 716 So. 2d 827 (Fla. 4th DCA 1998) further undercuts the State's argument that the Fourth District misapplied Rule 3.170(f) when arriving at its opinion in the instant case. *Daniels* also involved a situation wherein a Defendant filed a motion to withdraw a plea pursuant to Rule 3.170(l). In that case, the

defendant entered pleas of nolo contendere to the charges of possession of cocaine and possession of less than 20 grams of cannabis. Neither in the plea nor the plea colloquy was the Defendant informed that his driver's license would be revoked pursuant to section 322.055 (1), Florida Statutes (1997). After learning of this consequence of the plea, he moved to withdraw his plea within thirty days.

In determining that the plea should be withdrawn, the *Daniels* court again considered the issue of voluntariness of the plea. "One aspect of a voluntary plea is that the defendant understand the consequences of his plea, including 'the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law'" *Id.* at 828 (citations omitted). Recognizing that a court need only inform a defendant of direct consequences of the plea, the court note that the definition of "direct" turns on whether the result represent a "definite, immediate and largely automatic effect on the range of the defendant's punishment." *Id.* (Citations omitted). Determining that a license suspension which occurred automatically upon conviction was definite, immediate and automatic, the court held that the trial court was required to inquire whether the defendant understood he was subject to the suspension before accepting his plea.

In *Major v. State*, 814 So. 2d 424, 431 (Fla. 2002), this Court approved of the less restrictive definition of direct consequence relied upon by the *Daniels* court, as set forth in the opinion in *Zambuto v. State*, 413 So. 2d 461, 462 (Fla. 4th DCA 1982). If under that less restrictive definition of a direct consequence, ignorance of a two year automatic license suspension is sufficient to void a plea for lack of voluntariness, then certainly ignorance of an automatic lifetime reporting requirement presents a more compelling argument to set aside a plea on that basis.

The Fourth District Court's reliance upon the aforementioned precedent establishes a sound legal basis for its determination that the Respondent's plea was involuntary. At no time was the standard set forth in Rule 3.170(f) the basis for the District Court's ruling. It simply mentioned the standard set forth therein in dicta. Nor was the court's conclusion that the plea should be withdrawn inconsistent with the standard set forth in Rule 3.170(l). Although the *Partlow* court did not explicitly so state in its holding, its determination that the Respondent's plea was involuntary certainly establishes that withdrawal of the plea is necessary to correct a manifest injustice. *See, e.g., LeDuc v. State,* 415 So. 2d 721, 722 (Fla. 1982) citing *Williams v.* State, 316 So.

2d 267 (Fla. 1975)(“withdrawal is necessary to correct a manifest injustice whenever the defendant proves that...the plea was involuntary...”). The Fourth District correctly determined that Respondent’s plea was involuntary. Accordingly, this Court should sustain the appellate court’s determination that the trial court should have permitted the plea to be withdrawn.

CONCLUSION

WHEREFORE, based upon the foregoing arguments and authorities, the Respondent, Thomas E. Partlow, respectfully submits that the decision of the Fourth District Court of Appeal should be affirmed.

Law Offices of
Kathleen Cooper Grilli
2455 Hollywood Blvd.
Hollywood, Florida 33020
Telephone: (954) 453-1177
Facsimile: (954) 443-3745

KATHLEEN COOPER GRILLI, ESQ.
Florida Bar No. 727199

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Respondent’s Answer Brief on the Merits was mailed

this

26th day of June, 2002 to Maria J. Patullo, Assistant Attorney General, 1515 N. Flagler Drive, 9th Floor. West Palm Beach, FL 33401.

KATHLEEN COOPER GRILLI, ESQ.
Florida Bar No. 727199
Counsel for Respondent

CERTIFICATE OF TYPE SIZE AND STYLE

In accordance with the Florida Supreme Court Administrative Order, issue on July 13, 1998, Respondent hereby certifies that the instant brief has been prepared with 12 point Courier New type, a font that is not spaced proportionately.