IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO.SCO2-713

STATE OF FLORIDA

Petitioner,

vs.

EDWARD T. PARTLOW,

Respondent.

PETITIONER'S ANSWER BRIEF ON THE MERITS

ROBERT A. BUTTERWORTH
Attorney General
Tallahassee, Florida

CELIA TERENZIO, BUREAU CHIEF
Florida Bar No. 656879

MARIA J. PATULLO
Assistant Attorney General
Florida Bar No.0975842
1515 North Flagler Drive
9th Floor
West Palm Beach, Florida 33401
Telephone: (561) 837-5000
Facsimile: (561) 837-5099

Counsel for Respondent

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PRELIMINARY STATEMENT

Petitioner was the Defendant and Respondent was the prosecution in the Criminal Division of the Circuit Court of the 15th Judicial Circuit, in and for Palm Beach County, Florida. Respondent was the Appellee and Petitioner was the Appellant in the Fourth District Court of Appeal. In this brief, the parties shall be referred to as they appear before this Honorable Court except that Respondent may also be referred to as the State.

All emphasis in this brief is supplied by Respondent unless otherwise indicated.

The following symbols will be used:

IB = Appellant's Initial Brief in the Fourth District Court of Appeal;

R = Record on Appeal

T = Transcript of the motion to withdraw plea hearing

References to the transcript will include the symbol and page number, for example (T 2), refers to page two in the

transcript of the motion to withdraw plea hearing.

STATEMENT OF THE CASE AND FACTS

The respondent plead guilty to a sexual offense without being informed of the sex offender registration requirement. Subsequently, ten days after the plea and sentencing hearing, the respondent moved to withdraw his guilty plea, stating that he would not have entered the plea had he known of the requirement. The trial court denied the respondent's motion to withdraw and the respondent appealed. The Fourth District Court reversed the lower court's ruling, finding that State v. Stapleton, 764 So. 2d 886 (Fla. 4th DCA 2000) and Florida Rule of Criminal Procedure, rule 3.170(f) governed the legal issues. The Fourth District Court held that the respondent should have been permitted to withdraw his plea as good cause was shown where the respondent lacked knowledge of the registration requirement. The Court certified conflict with the First District Court of Appeal in Nelson v. State, 780 So.

2d 294 (Fla. 1st DCA 2001), holding that it disagreed with the First District's ruling which applied rule 3.170(L) and held that a trial court has discretion to deny a respondent's motion to withdraw plea where the plea did not result in manifest injustice.

SUMMARY OF THE ARGUMENT

The Fourth District Court erred in applying Florida Criminal Rule of Procedure, rule 3.170(f), as its reasoning for reversing the lower court's ruling denying the respondent's motion to withdraw plea after sentencing. The Fourth District Court erred in determining that a respondent meets the requirement for showing "good cause" pursuant to rule 3.170(f) upon showing he lacked knowledge of the sex offender registration requirement, and as a result, the respondent must be allowed to withdraw his plea.

ARGUMENT

THE FOURTH DISTRICT COURT WAS INCORRECT IN FINDING THE TRIAL COURT ERRED IN DENYING THE RESPONDENT'S MOTION TO WITHDRAW PLEA AS IT INCORRECTLY APPLIED RULE 3.170(F)

The Fourth District Court of Appeal reversed the trial court's decision denying the respondent's motion to withdraw plea and held that the lack of advising a defendant of the notification and registration requirement for a convicted sex offenders renders a plea void as it was entered involuntarily. The Fourth District Court explained:

> Because the pertinent facts and legal issue are identical, the outcome in this case should be no different than the one in State v. Stapleton, 764 So. 2d 886 (Fla. 4th DCA 2000). In each of these cases, the defendant pleaded to a sexual offense without being informed of the sexual offender registration requirement and promptly thereafter moved to withdraw the plea. Both defendants stated unequivocally that they would not have entered the plea if they had known of the requirement. In Stapleton the motion was filed within 30 days of the plea, while in this case it was filed even more promptly- just 10 days after the plea and sentencing. In neither case is there any plausible argument of prejudice to the state. Stapleton obviously stands for the proposition that these circumstances amount to good cause. As we did in Stapleton, therefore, we hold that this defendant "should have been advised of the known consequences of his plea at the time of the taking of the plea." 764 So. 2d at 888.

Partlow v. State, 813 So. 2d 999, 27 Fla. L. Weekly D654 (Fla. 4th DCA March 20, 2002).

> In Nelson v. State, 780 So. 2d 294 (Fla. 1st DCA 2001), where the facts are identical,

the first district affirmed an order refusing to allow the plea to be vacated, holding that Stapleton did not require a reversal because the issue presented is one of discretion. The Nelson court explained that:

> Because Nelson did not allege any affirmative misrepresentation, but only the failure to advise him of a collateral consequence, we conclude that the trial court's denial of Nelson's motion to withdraw his plea did not result in manifest injustice." 780 So. 2d at 295.

With respect we disagree. There are several things that a defendant who contemplates pleading guilty or no contest to a crime might be charged with knowing from publication of laws, but we still insist of having the defendant reminded of them before he pleads. Among them are the right to trial by jury, the right to counsel, the right to appeal, notice that the state will seek habitual felony offender sentencing, and now even the consequence of deportation of alien defendants as a result of the conviction. Presumptive knowledge of the law as a categorical basis for refusing a timely application to vacate a plea would seem contrary to the policy of liberally granting such relief in favor of the inclination for trials on the merits in criminal cases. Timothee v. State, 721 So. 2d 776 (Fla. 4th DCA 1998). **It would also seem inconsistent with the command of rule 3.170(f) that the court "shall on good cause, at any time before a sentence, permit a plea of guilty to be withdrawn."** In short, under the rationale of Nelson, on this issue with identical facts, the law would nonetheless tolerate directly contradictory outcomes in Stapleton and

Nelson.

Partlow v. State, 813 So. 2d 999, 1000, 27 Fla. L. Weekly D654 (Fla. 4th DCA March 20, 2002).

The Fourth District court's decision in this case misapplied rule **3.170(f)** which states, "**the court may in its discretion, and shall on good cause, at any time before sentence, permit a plea of guilty to be withdrawn**. Florida Rules of Criminal Procedure. In this case, the sentence was rendered and the defendant subsequently filed a motion to withdraw. The Fourth District Court of Appeal noted that the motion to withdraw was "filed even more promptly - just 10 days after the plea and sentencing." Partlow at 999. The State argues that the motion was not promptly filed but rather, it was filed late, and as such, rule 3.170(f) does not apply. As in Nelson, **rule 3.170(l), not rule 3.170(f)**, would apply in the case at hand. Id. **Rule 3.170(l)** provides that a defendant is permitted to file a motion to withdraw his guilty or no contest plea after he is sentenced upon the showing of manifest necessity. Inconsistent with its own ruling, in Scott v. State, 629 So. 2d 888 (Fla. 4th DCA 1993), the Fourth District applied **rule 3.170(l)** as the standard for withdrawals of pleas **after sentencing**. The Fourth District stated, "In Williams v.

State, 316 So. 2d 267 (Fla. 1975), the supreme court recognized that while the Florida Rules of Criminal Procedure provide guidelines for withdrawing pleas before sentencing, there is no rule setting forth requirements for the withdrawal of pleas after sentencing. The supreme court in Williams adopted the standards enunciated by the American Bar Association for a plea of withdrawal after sentencing, **holding that a defendant should be allowed to withdraw a guilty or nolo contendre plea when the defendant proves the withdrawal is necessary to correct a manifest injustice**. The burden to prove a manifest injustice is placed on the defendant." Scott at 890. Therefore, **withdrawal of a plea after sentencing is permitted only after defendant proves withdrawal is necessary to correct manifest injustice and the defendant has proven manifest injustice**.

As written in the dissenting opinion in this case, the Fourth District Court has ruled that, "with respect to sex offender registration requirement, courts have held that a defendant need not be informed of these designations before entering a plea, because they are collateral, rather than direct, consequences resulting from his convictions of certain sexual offenses. Citing Nelson v. State, 780 So. 2d 294 (Fla. 1st DCA 2001) and **Pearman v. State, 764 So. 2d 739 (Fla. 4th DCA**

2000). In this case, there is no manifest injustice because the sex offender registration requirement is a collateral consequence and furthermore, there was no misrepresentation regarding this consequence. In essence, the district court has applied an incorrect standard to a motion to withdraw a plea after sentencing, contradicting its own correct application of rule 3.170(l) in previous decisions, and contradicting the rule as applied in Nelson. In so doing, it has impermissibly elevated the value of a collateral consequence when finding the defendant has met the requirement of showing good cause for the standard of withdrawing a plea **prior to sentencing** when in fact, the standard that must be applied to a motion to withdraw after sentencing is manifest injustice.

CONCLUSION

WHEREFORE, based on the above and foregoing arguments and authorities cited therein, the State of Florida respectfully submits that the decision of the **Fourth District Court of Appeal** should be **REVERSED** and the judgment and sentence imposed by the trial court should be **AFFIRMED.**

Respectfully submitted,

ROBERT A. BUTTERWORTH
Attorney General
Tallahassee, Florida

CELIA TERENZIO, BUREAU CHIEF
Florida Bar No. 656879

MARIA J. PATULLO
Assistant Attorney General
Florida Bar No.0975842
1515 N. Flagler Drive
9th Floor
West Palm Beach, FL 33401
TEL(561) 837-5000
FAX (561)837-5099
Counsel for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petitioner's brief on the merits by Mail to: Kathleen Cooper Grilli, Esquire, 2455 Hollywood Blvd., Suite 123, Hollywood, Florida 33020, this _____day of June, 2002.

____
OF COUNSEL

CERTIFICATE OF TYPE SIZE AND STYLE

In accordance with the Florida Supreme Court Administrative Order, issued 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.