

IN THE SUPREME COURT OF FLORIDA

LAWRENCE LOGAN, :
 :
 Petitioner, :
 :
 vs. : Case No. SC03-1155
 :
 STATE OF FLORIDA, :
 :
 Respondent. :
 :
 _____ :

DISCRETIONARY REVIEW OF DECISION OF THE
DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

SUPPLEMENTAL BRIEF OF PETITIONER ON THE MERITS

JAMES MARION MOORMAN
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

CAROL J. Y. WILSON
Assistant Public Defender
FLORIDA BAR NUMBER 0368512

Public Defender's Office
Polk County Courthouse
P. O. Box 9000--Drawer PD
Bartow, FL 33831
(863) 534-4200

ATTORNEYS FOR PETITIONER

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STATEMENT OF THE CASE AND FACTS

Petitioner Lawrence Logan was originally sentenced in Hendry County by Judge James R. Adams for six counts of robbery with a firearm on December 11, 1984. The robbery offenses were committed on March 17, 1984.

This Court ordered supplemental briefing in this case, limited to the sole question: "Because the defendant committed the offenses prior to July 1, 1984 (the effective date of the 1983 guidelines), but after October 1, 1983, does he have the right to be sentenced pursuant to section 921.001(4)(b)1., Florida Statutes?" Order of February 4, 2005.

SUMMARY OF THE ARGUMENT

Petitioner had the right to be sentenced under §921.001(4)(b)1., Florida Statutes. The offense date is March 17, 1984, and therefore after October 1, 1983. The sentencing occurred on December 11, 1984. Pursuant to §921.001(4)(a), Florida Statutes (1984), the sentencing guidelines apply "to all felonies, except capital felonies, committed on or after

October 1, 1983, and to all felonies, except capital felonies and life felonies, committed prior to October 1, 1983, for which sentencing occurs after such date when the defendant affirmatively selects to be sentenced pursuant to the provisions of this act." The statute in effect at the time of the original sentencing required offering an affirmative selection for those defendants not covered under the then new law, but who were sentenced after the effective date of the sentencing guidelines. Mr. Logan clearly falls into this category and must be sentenced under the sentencing guidelines. Reversal and resentencing under the sentencing guidelines is required.

ARGUMENT

ISSUE

BECAUSE THE DEFENDANT COMMITTED THE OFFENSES PRIOR TO JULY 1, 1984 (THE EFFECTIVE DATE OF THE 1983 GUIDELINES), BUT AFTER OCTOBER 1, 1983, DOES HE HAVE THE RIGHT TO SELECT TO BE SENTENCED PURSUANT TO SECTION 921.001(4)(b)1., FLORIDA STATUTES?

Petitioner has the right to be sentenced under Section 921.001(4)(b)1., Florida Statutes, and therefore under the sentencing guidelines, if he so selects that sentencing provision. Since Petitioner selected the sentencing guidelines, the trial court was required to sentence him according to those guidelines.

A chronology of the relevant laws and dates from Mr. Logan's case is set forth below:

Effective date of original guidelines legislation
10/1/1983
Logan's offense dates
3/17/1984
Effective date of guidelines under <u>Smith</u>
7/1/1984

Logan's	original	sentencing	date
12/11/1984			
Logan's		resentencing	date
5/8/2001			

The law in effect at the time of Mr. Logan's original sentencing hearing, §921.001(4)(a), Florida Statutes (1984), states the sentencing guidelines apply "to all felonies, except capital felonies, committed on or after October 1, 1983, and to all felonies, except capital felonies and life felonies, committed prior to October 1, 1983, for which sentencing occurs after such date when the defendant affirmatively selects to be sentenced pursuant to the provisions of this act." The statute in effect at the time of the original sentencing required offering an affirmative selection for those defendants not covered under the then new law, but who were sentenced after the effective date of the sentencing guidelines.

This same sentencing provision was later renumbered and changed effective November 24, 1993, to reflect the current language of 921.001(4) under subsection (b). Currently the statute reads as follows:

The guidelines enacted effective October 1, 1983, apply to all felonies, except capital felonies, committed on or after October 1, 1983, and before January 1, 1994; and to all

felonies, except capital felonies and life felonies, committed before October 1, 1983, when the defendant affirmatively selects to be sentenced pursuant to such provisions.

§921.001(4)(b)1., Fla. Stat. The language "prior to that date and for which sentencing occurs after such date" was removed and replaced by the language "before October 1, 1983." Ch. 93-417, Fla. Sess. This change does not affect Petitioner's case, in which sentencing of December 11, 1984, occurred after the effective date of the sentencing guidelines, but the offense date of March 17, 1984, predated the sentencing guidelines effective date of July 1, 1984. The affirmative selection provision of the statute remained in tact, as it does to this day.

The state's position in the district court and in this Court is that the Criminal Punishment Code applies to Petitioner's case. Nowhere in the guidelines or the code did the legislature provide for a selection under the sentencing guidelines to mean a selection of sentencing under the Code. The legislature provided for selection of a guidelines sentence and did not include that same provision in the Code.

A plain reading of the sentencing guidelines and the Code then shows that the selection provision applies only to sentencing guidelines sentences, and not to Criminal Punishment Code sentences. Had the legislature intended to do as the state suggests, the selection provision of the

sentencing guidelines reenacted in Ch. 97-194 would have been rewritten to provide that selections under the sentencing guidelines after the repeal of the sentencing guidelines would mean a selection under the Code.

In Smith v. State, 537 So.2d 982 (Fla. 1989), this Court decided that the sentencing guidelines were enacted effective July 1, 1984, not October 1, 1983. This holding regarding the effective date of the guidelines was based on the separation of powers provision of the state constitution. Id. at 983-987.

Smith committed his offenses prior to July 1, 1984. Smith was also originally sentenced prior to July 1, 1984. Id. at 983. This Court determined that "[o]rdinarily, this would mean that appellant would be resentenced as if the guidelines had never been enacted." Id. at 987. Because Smith had been resentenced after a reversal on direct appeal, however, this Court ruled "Under section 921.001(4)(a), a person whose crime was committed before the effective date of the guidelines but sentenced thereafter may affirmatively select to be sentenced under the guidelines." Id. at 987. Under this Court's precedent of Smith, Petitioner should be sentenced under §921.001(4)(b)1., Fla. Stat.

A common sense reading of the plain language of the statute dictates that Petitioner has a right to select sentencing under the parole or sentencing guidelines system.

Section 921.001(4)(b)1. provides that "The guidelines enacted effective October 1, 1983, apply to all felonies, except capital felonies, committed on or after October 1, 1983. . . ."
" Smith determined that no guidelines were effective October 1, 1983. This law should be read with emphasis on not the correct effective date of the guidelines legislation, but with emphasis on the legislative intent as evidenced in the plain language of the statute. This Court has previously said, "When construing a statutory provision, legislative intent is the polestar that guides our inquiry. . . ." McLaughlin v. State, 721 So.2d 1170, 1172 (Fla. 1998).

Additionally this Court has previously stated, "a literal interpretation of the language of a statute need not be given when to do so would lead to an unreasonable or ridiculous conclusion." Holly v. Auld, 450 So.2d 217, 220 (Fla. 1984). The plain common sense reading of the statute shows that the law was not enacted to refer to a law that did not exist, but that the law was enacted to plainly set forth an effective date for the sentencing guidelines legislation and to provide for a selection provision for all crimes committed prior to that selection date, when sentencing occurs after the effective date. Any other construction of this statutory provision is a forbidden contortion of a clear and unambiguous statute. McLaughlin v. State, 721 So.2d 1170, 1172 (Fla.

1998). Applying these tried and true principles of statutory construction, the only common sense construction of the statute is that the selection between the parole and sentencing guidelines statutes is available for all crimes committed on or before the effective date of the sentencing guidelines when sentencing occurs after the effective date of the sentencing guidelines.

Failing to afford Petitioner the right to select between the parole and guidelines sentencing options under 921.001(4)(b)1., Fla. Stat., is a violation of the state and federal ex post facto constitutional provisions. The ex post facto clause of the federal and state constitutions are aimed at ensuring "that legislative enactments 'give fair warning of their effect and permit individuals to rely on their meaning until explicitly changed.'" Miller v. Florida, 482 U.S. 423, 430 (1987), quoting Weaver v. Graham, 450 U.S. 24, 28-29 (1981); Britt v. Chiles, 704 So.2d 1046 (Fla. 1997). A law is therefore considered ex post facto if it applies to events occurring prior to its enactment and if it disadvantages the offender affected by it. Id. Lynce v. Mathis, 519 U.S. 433 (1997).

This Court determined that no ex post facto violation occurred in Smith, when a 1988 revision of the sentencing guidelines was found to be the applicable sentencing laws for

those 1983 offenses. In Smith some form of the sentencing guidelines were deemed to apply, however, and the original sentencing hearing had occurred prior to the effective date of the sentencing guidelines. In Petitioner's case, the original sentencing hearing was held on December 11, 1984, when the guidelines were effective law, but the district court held that a decidedly disadvantageous and subsequently enacted sentencing scheme, the Code, applies to his 1984 offenses. This district court ruling robs Petitioner of the statutorily granted and constitutionally protected right he held on his original sentencing date and also on his May 8, 2001 resentencing. This right was to select, in accordance with 921.001(4)(b)1., between the parole sentencing system and the sentencing guidelines. Accordingly the decision of the district court must be quashed and this matter remanded for resentencing under the sentencing guidelines.

CONCLUSION

Based on the arguments and authorities presented herein, Appellant respectfully requests that this Court reverse the sentences of the trial court and remand this case for resentencing.

CERTIFICATE OF SERVICE

I certify that a copy has been mailed to Dale E. Tarpley, Assistant Attorney General, Concourse Center #4, 3507 E. Frontage Rd. - Suite 200, Tampa, FL 33607, (813) 287-7900, on this _____ day of February, 2005.

CERTIFICATION OF FONT SIZE

I hereby certify that this document was generated by computer using Microsoft Word with Courier New 12-point font in compliance with Fla. R. App. P. 9.210 (a)(2).

Respectfully submitted,

JAMES MARION MOORMAN
Public Defender
Defender
Tenth Judicial Circuit
(863) 534-4200

CAROL J. Y. WILSON
Assistant Public

Florida Bar Number 0368512
P. O. Box 9000 - Drawer PD
Bartow, FL 33831

cjw