

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

REPLY SUPPLEMENTAL BRIEF OF PETITIONER ON THE MERITS

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TENTH JUDICIAL CIRCUIT

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SUMMARY OF THE ARGUMENT

The parties agree that §921.001(4)(b)1., Fla. Stat., entitles Mr. Logan to elect to be resentenced under the guidelines. The parties disagree regarding whether the "guidelines" means the sentencing guidelines or, as the State argues, the Criminal Punishment Code. The plain meaning of the statute requires interpreting the "guidelines" to mean the sentencing guidelines. Since no valid basis for a guidelines departure sentence has been set forth in the trial court or on appeal, the trial court must resentence Mr. Logan to a guidelines sentence of 12-17 years.

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?

Since both parties agree that Mr. Logan had the right to select between the parole and guidelines sentencing provisions, the only matter in dispute is whether the term "guidelines" as used in §921.001(4)(a), means the sentencing guidelines governed by the same statute, §921.001, Fla. Stat., or means the Criminal Punishment Code, which is covered by an entirely different statute, §921.002, et. seq. Fla. Stat. It defies common sense and basic principles of statutory construction to believe that the term "guidelines" in the statute written to govern the sentencing guidelines actually meant an entirely different statute, the Code. This is especially so, since the Code was written specifically to replace the repealed guidelines and since the Code was not even written when the term "guidelines" was included in §921.001(4)(a). Moreover, the legislature, by using the word "guidelines," specifically referred to the sentencing laws governed by §921.001, and did not refer to any future sentencing laws. Had the legislature wished to so provide

that the election provision apply to any subsequently enacted laws, the legislature needed only to plain state that in the newly written law or to use another phrase instead of the word "guidelines." The legislature clearly intended that the election provision pertain to the body of law encompassed by §921.001, the sentencing guidelines. This is the only ordinary and plain reading of the election provision. Knowles v. Beverly Enterprises-Florida, Inc., 29 Fla. L. Weekly S788 (Fla., filed Dec. 16, 2004), rehearing denied, March 17, 2005; Holly v. Auld, 450 So.2d 217, 219 (Fla. 1984).

The state's blanket assertion that "those guidelines are the Criminal Punishment Code," Respondent's Supplemental Brief at 6-7, has no basis in law or logic or in the district court's decision below. The Second District decision relies solely on Smith, without considering the applicable statutory provision, §921.001(4)(a), Fla. Stat. This failure to consider the applicable statute is also the flaw of all the district court cases relied upon by the State for the proposition that election under the guidelines means an election under the Code. See Quevado v. State, 838 So.2d 1253, 1254 (Fla. 2d DCA 2003); Sheely v. State, 820 So.2d 1080 (Fla. 2d DCA 2002); Kunkel v. State, 765 So.2d 244 (Fla. 1<sup>st</sup> DCA 2000). Since §921.001(4)(a), Fla. Stat. applies to Mr. Logan's sentencing election, the Code cannot be the applicable

sentencing statute. The applicable sentencing statute is the sentencing guidelines.

Since the State has failed during the entire appeals process to address whether the life sentences imposed were lawful sentences under the sentencing guidelines, the State has waived any argument that those departure life sentences are valid and lawful under the sentencing guidelines. If the departure life sentences are not valid or lawful, then those sentences are illegal. If the departure life sentences are illegal, then the applicable statutory provision, the sentencing guidelines, requires imposition of a guidelines sentence. Since the sentencing guidelines apply to Mr. Logan's sentences and no lawful grounds for the departure sentences were set forth in the trial court or on appeal, this Court must quash the decision of the district court and remand this matter for sentencing within the guidelines range of 12 to 17 years. Ree v. State, 565 So.2d 1329 (Fla. 1990); State v. Colbert, 660 So.2d 701, 702 (Fla. 1995).

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, Concourse Center #4, 3507 E. Frontage Rd. - Suite 200, Tampa, FL 33607, (813) 287-7900, on this \_\_\_\_\_ day of April, 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,

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