

IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. SC07-1402

**BLANCHARD ST. VAL,**

Petitioner,

- versus -

**STATE OF FLORIDA,**

Respondent.

RESPONDENT'S BRIEF ON THE MERITS

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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 Fifteenth Judicial Circuit, in and for Palm Beach County, Florida. Petitioner was Appellant and Respondent was Appellee in the District Court of Appeal of Florida, Fourth District. 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.

In this brief, the following symbols will be used:

"R" to denote the record on appeal;

"SR" to denote the supplemental record on appeal; and

"T" to denote the trial and sentencing transcript.

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

## Statement Of The Case And Facts

The State accepts Petitioner's Statement of the Case and Facts for purposes of this appeal insofar as it presents an accurate, objective and non-argumentative recital of the procedural history and factual testimony contained in the record, and subject to the following additions, deletions, modifications and clarifications:

At the sentencing hearing, after two victims made statements to the trial court, Petitioner spoke and presented the following sworn statement for the court's consideration when imposing sentence:

**Like I tell you, Judge, that, you know, I have a family, you know, and I also got a young little boy and, you know, I feel like 25 years is life in prison.** It wouldn't be a correct sentence for the simple fact that you know all things it is, you know, all things in life have --

Now, what I'm saying, certain reasons, and, you know, I have learned my lesson, since I been in jail. Came in 2003, you know, done changed a lot, you know, became a better man. I became (sic) in contact with my father in heaven, you know, and he taught me a lot, he feel me, you know. And I just want to tell you that, you know what I'm saying, I -- you know, **I just feel like 25 years to life is too long, you know. I understand that these people got hurt, you know, but they still, still living as today, they going to work, they having they (sic) little fun out there, you know. Twenty five years wouldn't be a correct sentence.**

(T. 636-37) (emphasis added).

Petitioner's father next testified on his behalf at the sentencing hearing. He

reiterated Petitioner's view that a 25-year sentence was much too long considering the fact that the victims were fortunate enough to have survived the shooting:

Fritz is still living, why you put Blanchard [Petitioner] in jail for life, he is still living, you know, Fritz right there, still living, okay, put Blanchard in jail maybe five, ten 15 years. It doesn't make no sense to put him in jail because he is still living, to put Blanchard in jail for life because he still living.

(T. 641). Petitioner's father further testified that he believed if Petitioner were released from prison in the future, Petitioner would become a productive member of society (T. 642).

Based on Petitioner's prior record and clear escalation to the commission of more and more violent crimes, the State asked that he be sentenced to the maximum term of life (T. 644-47).

Defense counsel requested that the trial court considered sentencing Petitioner as a youthful offender, or in the alternative, to the minimum of 25 years, and made the following argument in support of that sentence:

The facts of the case were, the van that [the victims were] driving in was shot at from across the street, which there was a diagram from 75 feet, or something like that, from the intersection; that was the testimony from the trial.

Unfortunately, [the victim] was hit and hurt and suffers from these injuries, **but this is not a case where the defendant walked up to a person and intentionally shot him in the head, intentionally tried to kill him and had the meanest and viciousness, heinous act**

**to someone who should be sentenced to life.**

\* \* \*

He [Petitioner] was 17 years old, **the shots that were fired were random shots at the car. And, unfortunately, [the victim] was hit and hurt.** We all wish that that didn't happen, that they might have stayed at the party they were supposed to go to and not even been in the area that day, but they were hurt or she was hurt and Ms. Dor suffers emotional pain from being in the car.

And we know that you have to impose a sentence, so Judge, we would just ask you, again, to consider youthful offender and if you do not consider that, to please recognize that 25 years minimum mandatory is more than a sufficient penalty for the activity on that day, thank you.

(T. 648-50).

The trial court's complete pronouncement of Petitioner's sentence went as follows:

Everyone may be seated. I previously reviewed all of my notes from trial. I have considered everything that everyone has said here at the sentencing hearing. I looked at this record of Mr. Blanchard. I'm ready to impose sentence.

I do want to ask that everybody in the courtroom who is, obviously, involved and, perhaps, emotionally, think about whether you are going to be able to contain your emotions or whether you are going to have a feeling like you have to express your emotions when sentence is imposed and if you feel as though you are going to have to express your emotions, I ask you to step outside the courtroom, somebody will come out and tell you what the sentence was because we do need to maintain the courtroom decorum here.

I can see that quite a bit of emotions are here as, of course, there would be with a serious situation like this. I am looking at the fact that the defendant was very young when he committed the crime and considering that is mitigation, however, what I'm also looking at is the issue of choices, the issue of responsibility and issue of intent.

And I find in looking at the evidence that came in while the jury was here and the statement of the defendant now and references to the incident from the defense are that Mr. St. Val is not taking responsibility and not showing remorse is taking a position that it was a wild shot, someone happened to get hurt. He expressed that he's sorry that someone happened to get hurt.

It isn't that someone happened to get hurt, you hurt somebody, and I find that the evidence supported the finding that it was intentional. The eyewitnesses said that before the shooting, you said, I'm going to blast you, addressing, Mr. Horeb, which is comical, a racial slur. So the statement was made, I'm going to blast you and you did, you shot him in the head because that's what you intended to do. And it wasn't just a wild shot, that happened to hurt him, the skull was fractured. The doctor said that this kind of injury can make the brain like that kind of injury is potentially life-threatening and we know that result is a man and his memory loss, reading skill loss, other basic skills lost. Headaches and all of that was in evidence at trial.

It's true, he didn't die and that wasn't because of anything that Mr. St. Val, you did, the fact that he didn't die was because he so happened, he didn't die. I cannot accept your telling me that the sentence the legislature imposes for that type of crime is not a fair sentence because these victims are out free and you are not. And there is a reason for that; because they didn't shoot anybody and you did.

What the record shows, you have had a chance, you have had rehabilitation. You, yourself, said, been exposed to many educations on this issue, but still made the choice that you were going to carry a firearm, that you were going to aim it at someone's head and that you



were going to shoot six times and that's about as cold a choice as you can make.

So I find that the appropriate sentence, as provided by the legislature, is life in prison with minimum mandatory of 25 years on Count 1 -- the 15 years not mandatory but 15-year maximum sentence on Count 2, Count 3 and Count 4 will all be served concurrently.

(T. 651-54).

Petitioner subsequently filed a written motion to correct sentencing error (SR. 1-14, 16-29, 30-96). Petitioner presented the same argument that he now presents on appeal: the trial court impermissibly considered Petitioner's lack of remorse in imposing sentence. The trial court entered a written order denying the motion (SR. 97-98). In pertinent part, that order stated as follows:

1. The instant case is different from the cases relied upon by the defense counsel, in that in each of those cases a defendant's maintaining his innocence was a factor in the court's sentencing decision.

2. As the transcript of the sentencing shows, the Court's statement with reference to the Defendant not showing remorse, was made in context of the Court finding that the Defendant's action in shooting the victim was intentional, rather than careless or negligent (See Page 652, Transcript of Sentencing Hearing on February 3, 2006). The Court specifically found that the evidence at trial contradicted the Defendant's position that he took a wild shot and someone happened to get hurt, in that the testimony revealed that the statement made by the Defendant before the shooting was to the effect that he told the victim "I'm going to blast you" right before he shot the victim in the head. The Court's statements on the rest of Page 652 and the following pages make it clear that a portion of the Court's sentence

concerning the Defendant "not showing remorse" when considered in the full context of the statement and the rest of the Court's pronouncements, do not require a re-sentencing under the case law.

(SR. 97-98).

### **Summary Of The Argument**

The transcript reveals that the trial court did not impermissibly consider Petitioner's lack of remorse when imposing sentence. Instead, it shows the trial court took into consideration Petitioner's claim that the shooting was not intentional, but was instead careless, negligent or accidental. The trial court rejected Petitioner's claim of remorse only to the extent that Petitioner claimed the shooting was unintentional.

Even if the trial court improperly took Petitioner's lack of remorse into consideration, under the circumstances of the case at bar, Petitioner's due process rights were not violated. When he had the opportunity to speak on his own behalf at sentencing, he relinquished his right to maintain his innocence and admitted guilt. Thus, no due process rights were implicated.

## Argument

### **THE TRIAL COURT PROPERLY REJECTED PETITIONER'S CLAIM OF REMORSE.**

Petitioner claims that the trial court's consideration of Petitioner's lack of remorse in imposing sentence was error. Petitioner argues that the Fourth District Court of Appeal erred when it held that a sentencing judge may, under certain circumstances, take a defendant's lack of remorse into consideration when imposing sentence. St. Val v. State, 958 So. 2d 1146, 1146 (Fla. 4th DCA 2007). Petitioner contends that such a consideration violates principles of due process.

First, the record reveals that the trial court did not impermissibly consider Petitioner's lack of remorse when imposing sentence. The trial court's statement was made in the context of the court finding that Petitioner's action in shooting the victim was intentional, rather than careless or negligent, as argued by defense counsel. The trial court specifically found that the evidence at trial contradicted defense counsel's claim that Petitioner took a wild shot and someone happened to get hurt. As the trial court pointed out in its order denying the motion to correct sentence, the testimony at trial revealed that Petitioner told the victim, "I'm going to blast you pussy ass nigger" right before he shot the victim in the head (T. 215, 243). Thus, when taken in context, the trial court's statement obviously referred to

Petitioner's claim that the shooting was not intentional.

Additionally, this Court has permitted evidence of lack of remorse to rebut evidence of remorse or other rehabilitation. Tanzi v. State, 964 So. 2d 106, 115 (Fla. 2007) (citing Singleton v. State, 783 So. 2d 970, 978 (Fla. 2001)). The record shows that Petitioner, through counsel, was attempting to argue to the trial court that the shot was careless or negligent, not intentional. The transcript shows that the trial court considered this claim (pursuant to Petitioner's request) and rejected it. To the extent defense counsel could have been considered to have argued that Petitioner was remorseful, the trial court rejected that claim. Thus, the trial court rejected Petitioner's claim of remorse in the context of his argument that the shooting was careless or negligent, and this case differs from those relied upon by Petitioner because the court did not sua sponte consider Petitioner's **lack** of remorse. However, even if this Court considers the trial court's comment to be a consideration of Petitioner's lack of remorse, the State presents the following:

The United State Supreme Court has held that any judicially imposed penalty which discourages assertion of the Fifth Amendment right not to plead guilty and deters the exercise of the Sixth Amendment right to demand a jury trial is unconstitutional. United States v. Jackson, 390 U.S. 570 (1968). In Holton v. State, 573 So. 2d 284 (Fla. 1990), cert. denied, 500 U.S. 960 (1991), this Court

explained that:

A defendant has the right to maintain his or her innocence and have a trial by jury. Art. I, § 22, Fla. Const. The protection provided by the fifth amendment to the United States Constitution guarantees an accused the right against self-incrimination. The fact that a defendant has pled not guilty cannot be used against him or her during any stage of the proceedings because due process guarantees an individual the right to maintain innocence even when faced with evidence of overwhelming guilt. A trial court violates due process by using a protestation of innocence against a defendant. This applies to the penalty phase as well as to the guilt phase under article I, section 9 of the Florida Constitution.

573 So. 2d at 292. Thus, a protestation of innocence and lack of remorse may not be grounds upon which to base a sentence. However, this still leaves open the question presented in the instant case: whether a trial court may consider the failure to exhibit where a defendant does not maintain his innocence at sentencing, but, instead, makes an admission of guilt.

In the case at bar, Petitioner admitted guilt at sentencing and attempted to show that the shooting was careless or negligent. The transcript reveals that the trial court thoughtfully considered this claim (pursuant to Petitioner's request) and rejected it. Thus, the trial court rejected Petitioner's claim of remorse in the context of its broader rejection of Petitioner's attempt to characterize his crime as careless, negligent or accidental.

More specifically, in the trial court, Petitioner sought to avoid a life sentence

by claiming that the shot was careless, negligent or accidental. The trial court rejected Petitioner's contention. As the trial court pointed out in its order denying the motion to correct sentence, the testimony at trial revealed that Petitioner told the victim, "I'm going to blast you pussy ass nigger" right before he shot the victim in the head (T. 215, 243). Thus, when taken in context, the trial court's statement that it was rejecting Petitioner's "claim of remorse" obviously referred to Petitioner's claim that the shooting was not intentional.

As noted above, a defendant is provided, by constitution and by statutes, certain procedural safeguards in criminal proceedings and it is well-settled that a defendant cannot be penalized for asserting his right to these safeguards, such as the right to a trial (either by a jury or by the court), the right to appeal and the right of post-trial collateral proceedings. Thus, Petitioner, when given the opportunity to speak on his own behalf, had a right to say nothing or he had the right to speak freely, not addressing the question of his guilt or innocence, or he had the right to use the opportunity for a protestation of his innocence. However, Petitioner chose to relinquish those rights, **admit guilt** and proclaim that the shooting was careless or accidental. Thus, when the trial court rejected Petitioner's claim of remorse, no due process rights are implicated.

Although the Fourth District certified conflict with the decision of the First

District in K.Y.L. v. State, 685 So. 2d 1380 (Fla. 1st DCA 1997), Petitioner does not discuss that case.<sup>1</sup> In K.Y.L., the First District stated that "lack of contrition or remorse is a constitutionally impermissible consideration in imposing sentence." 685 S. 2d at 1381. From the language of the First District's opinion, it appears the First District holds that consideration of lack of remorse is "constitutionally impermissible" in all circumstances, even where, as here, a defendant's constitutional rights are not implicated. As noted by the Fourth District in its opinion in the case at bar, in K.Y.L. the First District cited to Holton v. State, 573 So. 2d 284, 292 (Fla. 1990), cert. denied, 500 U.S. 960 (1991), and A.S. v. State, 667 So. 2d 994 (Fla. 3d DCA 1996). See K.Y.L. v. State, 685 So. 2d at 1381.

The facts of the present case are clearly distinguishable from those of Holton and A.S. In the case at bar, Petitioner did not contest his commission of the criminal acts and the evidence of such was overwhelming. His argument to the sentencing court focused on his state of mind and the circumstances of the shooting. Defense counsel argued that the court should not impose a life sentence because the shooting was careless or negligent. On the other hand, in both Holton

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<sup>1</sup>That is most likely because the opinion in K.Y.L. contains nothing regarding the facts of the case or whether the defendant continued to protest his innocence at sentencing.



and A.S., the defendants continued to maintain their innocence, thus implicating due process concerns.

Furthermore, the trial court's remarks about Petitioner's lack of remorse must be viewed in the context of its other findings. The trial court's sentence was based solely on the circumstances of the crime itself, and the sentencing judge's statement regarding remorse was made solely in the context of rejecting defense counsel's characterization of the nature of the offense. In spite of the overwhelming evidence adduced at trial, Petitioner attempted to downplay the seriousness of the crime and claimed at sentencing that the shooting was careless or negligent. Petitioner told a version of the facts that was completely contrary to the evidence adduced at trial. Clearly it was Petitioner's lack of candor on a subject that he voluntarily brought before the court that prejudiced him, not his "lack of remorse." Thus, Petitioner's due process rights were not violated because the trial court did not sentence Petitioner based upon an impermissible reason. As the Fourth District correctly pointed out, Petitioner was not punished for proclaiming his innocence and refusing to admit guilt after his conviction. Thus, Petitioner's case differs in this one important respect from the cases relied upon in the Initial Brief and the trial court did not err in considering and rejecting Petitioner's lack of remorse.

## **Conclusion**

WHEREFORE, based on the foregoing argument and authorities, Respondent respectfully submits that this Court affirm the decision of the Fourth District Court of Appeal in St. Val v. State, 958 So. 2d 1146 (Fla. 4th DCA 2007).

Respectfully submitted,

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**Certificate Of Service**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to Patrick B. Burke, Esquire, Assistant Public Defender, Criminal Justice Building, Sixth Floor, 421 Third Street, West Palm Beach, Florida, 33401, this \_\_\_\_\_ day of December, 2007.

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**Certificate Of Type Size And Style**

In accordance with Fla. R. App. P. 9.210(a)(2), Respondent hereby certifies that the instant brief has been prepared with Times New Roman 14 point font.

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