IN THE SUPREME COURT OF THE STATE OF FLORIDA,

STATE OF FLORIDA,

Petitioner,

v.

ALICIA GRIFFIN,

Respondent.

Case No. SC08-999

****

ON APPEAL FROM THE FOURTH DISTRICT COURT OF APPEAL

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PETITIONER'S INITIAL BRIEF ON THE MERITS

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Florida Rules of Criminal Procedure Sections 3.800(a), 3.800(c); 3.050; 3.850.

PRELIMINARY STATEMENT

Respondent, Alicia Griffin, sought certiorari review in the Fourth District Court of Appeal of a trial court order denying as untimely her rule 3.800(c) motion for mitigation of sentence. Petitioner at bar was the respondent in the Fourth District Court of Appeal.

The issue on review was whether the trial court had jurisdiction to hear her motion, considering the fact that – although it was made within sixty days of resentencing following the granting of a Rule 3.800(a) motion -- it was nevertheless made more than 16 years after she entered a nolo contendere plea and was initially sentenced to fifty years in prison.

In this brief, the parties will be referred to as they appear before this Court, except that the Respondent may also be referred to as "State" or "Prosecution."

The following symbols will be used:

R = Record on Appeal

T = Transcripts

STATEMENT OF THE CASE AND FACTS

The procedural history and facts on which the Fourth District Court of Appeal relied in making its decision are found in Griffin v. State, 979 So.2d 11253 (Fla. 4th DCA 2008), which Respondent adopts as its statement of the case and facts for the purpose of determining jurisdiction in this appeal. A copy of the Fourth District Court of Appeal's decision is attached hereto for the convenience of this Court.

Briefly, the facts of the case are as follows: in 1991, Respondent, Alicia Griffin, entered a plea of nolo contendere to sixteen counts and was sentenced to various concurrent terms, the longest of which was fifty (50) years. She did not appeal her conviction or sentences. In 2004, she the trial court granted her motion to correct illegal sentence and resentenced her in Count I, attempted first degree murder with a firearm, to forty (40) years. Following her resentencing, Respondent again moved to correct illegal sentence. This time her motion was denied; she appealed, and the Fourth District Court of Appeal reversed, finding that she should have been resentenced with respect to her convictions for kidnapping with a firearm. See Griffin v. State, 934 So.2d 614 (Fla. 4th DCA 2006).

On October 11, 2006, Respondent was resentenced to forty (40) years for the four counts of kidnapping with a firearm. She remains sentenced to fifty (50) years for several other counts.

On November 17, 2006, within sixty (60) days of her resentencing pursuant to the decision of the Fourth District Court of Appeal, Respondent moved for a mitigation and/or reduction of sentence pursuant to Rule 3.800(c) of the Florida Rules of Criminal Procedure. In her motion, entitled "Plea for Mercy," she appealed to the discretionary power of the trial court and asked that her sentence be reduced based on her representation that "my sixteen years incarceration has drastically changed me." (Respondent's motion together with her petition for writ of certiorari to the Fourth District Court of Appeal, is attached hereto as Exhibit "B" of Petitioner's appendix.) The trial court issued a written order in which it said:

> There is case law that holds that a Defendant receives a second opportunity to file a rule 3.800(c) motion after resentencing pursuant to a *direct* appeal. (Citations omitted). However, there is no rule that suggests a Defendant receive additional opportunities after each resentencing pursuant to a collateral appeal on a sentence originally pronounced on July 8, 1991.

The Fourth District Court of Appeal granted certiorari review of the trial court's decision. After describing the case as being one of first impression in the appellate courts of this state, found the trial court had departed from the essential requirements of the law. The Court agrees with Respondent that the "clear language of the rule [3.800(c)] indicates it applies to her situation" in that it "allows a trial court to 'reduce or modify . . . a legal sentence imposed by it within 60 days after the imposition.'"

The Fourth District thereupon quashed the order under review, and certified the following question as a matter of great public importance:

> IS RELIEF PURSUANT TO RULE 3.800(c) AVAILABLE ONLY WITHIN THE SIXTY-DAY PERIOD AFTER EITHER THE IMPOSITION OF A CONVICTED DEFENDANT'S ORIGINAL SENTENCE, THE COMPLETION OF THE DIRECT APPEAL PROCESS, OR A RESENTENCING AS THE RESULT OF SUCH DIRECT APPEAL PROCESS, OR IS IT AVAILABLE ALSO WITHIN THE SIXTY-DAY PERIOD AFTER A LEGAL SENTENCE WAS IMPOSED AS THE RESULT OF THE FILING OF A COLLATERAL MOTION FOR POSTCONVICTION RELIEF?

This appeal follows.

SUMMARY OF THE ARGUMENT

Petitioner submits this Court should hold that relief pursuant to Rule 3.800(c) should be available only within the sixty-day period after either the imposition of a convicted defendant's original sentence, the completion of the direct appeal process, or a resentencing as the result of such direct appeal process.

By cobbling together the unlimited time review of Rule 3.800(a) and the unlimited discretionary review of Rule 3.800(c), the decision of the Fourth District Court of Appeal allows discretion to be exercised multiple times presumably by multiple judges. It eviscerates the concept of finality, and it should not be allowed to stand.

ARGUMENT

RELIEF PURSUANT TO RULE 3.800(c) SHOULD BE AVAILABLE ONLY WITHIN THE SIXTY-DAY PERIOD AFTER EITHER THE IMPOSITION OF A CONVICTED DEFENDANT'S ORIGINAL SENTENCE, THE COMPLETION OF THE DIRECT APPEAL PROCESS, OR A RESENTENCING AS THE RESULT OF SUCH DIRECT APPEAL PROCESS.

Petitioner submits this Court should hold that relief pursuant to Rule 3.800(c) should be available only within the sixty-day period after either the imposition of a convicted defendant's original sentence, the completion of the direct appeal process, or a resentencing as the result of such direct appeal process.

It is of course well settled that a trial court may revoke or modify a sentence within sixty (60) days of the imposition of sentence. Wilson v. State, 487 So.2d 1130 (Fla. 1st DCA 1986). It is equally well recognized that there is a difference between revoking a sentence and modifying one. Upon a violation of community control, for example, the court has authority to "revoke, modify or continue" the probation or community control. If it chooses to revoke probation or community control, it must then impose a new sentence, which the state can appeal if it falls below the sentencing guidelines. State v. Bell, 854 So.2d 686, 690 (Fla. 5th DCA 2003). If, on the other hand, the trial court modifies the community control, the State cannot appeal because an existing sentence remains in effect. Id.

The exercise of discretion in sentencing following a successful appeal is similarly time-limited. The current law allows for modification of a sentence within sixty days of completion of the direct appeal process or resentencing as the result of such process. Obviously, the appellate process itself under time constraints: it begins with a strictly-enforced requirement that a notice of appeal be filed within thirty days, and is closely monitored throughout by the appropriate appellate court.

Simply stated, the question now before this Court is whether the long-established sixty-day modification clock is restarted every time a defendant is resentenced. Petitioner submits such an interpretation would take the law far beyond the intent of the current law.

In State v. Evans, 225 So.2d 548, 550 (Fla. 3rd DCA 1969) *cert. denied,* 229 So.2d 261 (Fla.1969), *cert. denied,* 397 U.S. 1053, 90 S.Ct. 1393, 25 L.Ed.2d 668 (1970), the Third District Court of Appeal said that "indefinite supervision by a trial court over all legal sentences it imposes . . . does not accord with reason or public policy." "Under our tripartite system of government," the Court said, "there must come a time when the judiciary's power to reduce a lawful sentence ends and vests in the executive department."

This Court quoted the language of the Third District in Abreu v. State, 660 So.2d 703, 704-705 (Fla. 1995), where it held that the sixty-day period in rule

3.800(b) may be extended pursuant to rule 3.050, "providing the matter is resolved within a reasonable time." In doing so the Court distinguished Evans for one reason only: "because the trial judge in that case did not rule on the motion for mitigation until two years after the motion was filed." The Court said, "The Florida Rules of Criminal Procedure are designed to promote justice and equity while also allowing for the efficient operation of the judicial system." Abreu v. State, id.

The language of Evans and Abreu, clearly shows this Court does not favor inordinate delay in sentencing. Indeed, the concept of "finality" is fundamental to the administration of justice. See, e.g., Goene v. State, 577 So.2d 1306, 1309 (Fla. 1991) (A criminal defendant "at some point must be entitled to rely on the finality of the court's action."); State v. M.C., 666 So.2d 877, 878 (Fla. 1995)("[W]e believe that juveniles should be accorded the same basic rights to finality and certainty in sentencing as adults tried as criminals. Therefore, we hold that any modification to a juvenile's sentence, including the imposition of restitution, should occur within sixty days of sentencing.") The question posed by the Fourth District Court of Appeal, if answered in the negative, drives a stake into the heart of finality because of the interplay of Rule 3.800(a) with Rule 3.800(c).

Rule 3.800(a) provides that "[a] court may at any time correct an illegal sentence imposed by it or an incorrect calculation made by it in a sentencing

guidelines scoresheet." See Martell v. State, 676 So.2d 1030, 1031 (Fla. 3rd DCA 1996). Application of the Rule is reserved for a narrow class of cases in which the sentence imposed can definitively be categorized 'illegal' as a matter of law. As explained by Judge Altenbernd in Judge v. State, 596 So.2d 73 (Fla. 2nd DCA 1991)(emphasis added), *rev. denied*, 613 So.2d 5 (Fla.1992):

> Rule 3.800(a) is intended to provide relief for a narrow category of cases in which the sentence imposes a penalty that is simply not authorized by law. It is concerned primarily with whether the terms and conditions of the punishment for a particular offense are permissible as a matter of law. *It is not a vehicle designed to re-examine whether the procedure employed to impose the punishment comported with statutory law and due process.*

Judge v. State, 596 So.2d at 77 (emphasis in the original).

At the same time, the Third District Court of Appeal recognized the potential trap posed by Rule 3.800(a) in when it held:

> However, the defendant's conviction became final more than two years ago and he cannot now utilize Rule 3.800(a) as a means of circumventing the strict timing requirements imposed by Rule 3.850. *See Alexander v. State*, 571 So.2d 122 (Fla. 3d DCA 1990). We commend the trial court's well reasoned and detailed order which we affirm in all respects.

Martell v. State, 676 So.2d at 1031.

Rule 3.800(a) has no time limit and needs none simply because any court at any

time can examine a cold record and determine – as a matter of law – whether an illegality was perpetrated and correct it, even if that illegality occurred decades earlier. The same is not true of Rule 3.800(c) which permits an act of pure judicial discretion, and, because the act is purely discretionary, prescribes that it must be performed within a limited period of time. The discretionary relief sought by the Respondent is the very thing which is prohibited by the rule. The decision of the Fourth District Court of Appeal cobbles those concepts together, and, carried to its logical conclusion, allows discretion to be exercised multiple times by multiple judges. It eviscerates the concept of finality, and it should not be allowed to stand.

CONCLUSION

WHEREFORE based on the arguments and the authorities cited herein, Respondent respectfully contends the certified question posed by the Fourth District Court of Appeal should be answered in the affirmative, that is, this Court should hold that relief pursuant to Rule 3.800(c) should be available only within the sixty-day period after either the imposition of a convicted defendant's original sentence, the completion of the direct appeal process, or a resentencing as the result of such direct appeal process.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing "Petitioner's Initial Brief on the Merits" was sent by United States mail to ALICIA GRIFFIN, Pro Se, DC #798838, Gadsden Correctional Facility, 6044 Greensboro Highway, Quincy, FL 32351-9100 on July ___, 2008.

_____

JOSEPH A. TRINGALI,
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Counsel for Petitioner

CERTIFICATE OF TYPE FACE AND FONT

Counsel for the Respondent/Appellee hereby certifies, pursuant to this Court's Administrative Order of July 13, 1998, that the type used in this brief is Times Roman 14 point proportionally spaced font.

_____

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APPENDIX

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