

TOPICAL INDEX TO BRIEF

PAGE NO.

PRELIMINARY STATEMENT 1

STATEMENT OF THE CASE AND FACTS 2

SUMMARY OF THE ARGUMENT 3

ARGUMENT 4

 ISSUE I

 THIS COURT SHOULD ACCEPT JURISDICTION IN
 THIS CASE BECAUSE THE DECISION OF THE
 DISTRICT COURT EXPRESSLY AND DIRECTLY CONFLICTS
 WITH THE FIFTH DISTRICT ON THE MATTER OF
 WHETHER ON REMAND FOLLOWING REVERSAL ON APPEAL
 A TRIAL COURT MAY PROVIDE WRITTEN REASONS FOR
 IMPOSING A PRISON SENTENCE WHERE THE TOTAL
 SENTENCING POINTS ARE 22 OR LESS WHEN THE COURT
 FAILED TO PROVIDE THE REASONS IN A 3.800(b)(2)
 PROCEEDING.

CONCLUSION 6

CERTIFICATE OF SERVICE 6

TABLE OF CITATIONS

PAGE NO.

State Cases:

Bryant v. State, 2012 WL 2401787, __ So.3d __ (Fla. 2nd DCA June 27, 2012) 1

Goldberg v. State, 76 So. 3d 1072 (Fla. 5th DCA 2011) 4,5

Additional Authorities:

Art. V, §3(b)(3), Fla. Const. (1980) 5

Fla. R. App. P. 9.030(a)(2)(A)(vi) 5

Fla. R. Crim. P. 3.800(b)(2) 3,4

section 775.082(10), Florida Statutes (2009) 3,4

PETITIONER'S BRIEF ON JURISDICTION

I. PRELIMINARY STATEMENT

The Petitioner, Mr. Bryant, was the defendant in the trial court and the Appellant in the Second District Court of Appeal. He will be referred to in this Jurisdictional Brief by his proper name. The opinion of the Second District Court is Bryant v. State, 2012 WL 2401787, __ So.3d __ (Fla. 2nd DCA June 27, 2012), and is attached as an appendix to this brief.

STATEMENT OF THE CASE AND FACTS

Mr. Bryant was charged in the trial court with robbery and felony petit theft. Following a jury trial he was convicted of petit theft and felony petit theft. The criminal punishment code scoreseheet reflected 17.1 total sentencing points. Without providing written reasons for doing so as required by section 775.082(10), Florida Statutes (2009), the trial judge sentenced Mr. Bryant to five years in prison. Mr. Bryant filed a timely notice of appeal on October 20, 2010.

On April 20, 2011, Mr. Bryant filed a 3.800(b)(2) motion to correct the sentence in the trial court pointing out the court's failure to file the required written reasons. The trial court did not respond to the motion.

On June 27, 2012, the Second District Court of Appeal issued its opinion reversing the sentence for the lack of written reasons required by section 775.082(10), and remanding the case to the trial court for resentencing and permitting the court to impose the same sentence if the required statutory findings are provided. Bryant v. State, 2012 WL 2401787, _____ So. 3d ____ (Fla. 2d DCA June 27, 2012) (Appendix).

A notice to invoke discretionary jurisdiction was timely filed in this Court On July 20, 2012.

SUMMARY OF THE ARGUMENT

The Second District certified conflict with the Fifth District on the issue of whether a trial court may provide the written reasons required under section 775.082(10), on remand following reversal on appeal where the trial court failed to correct the sentencing error in a Fla. R. Crim. P. 3.800(b)(2) hearing. Because the district court certified conflict, this Court has jurisdiction to review Petitioner's case.

ARGUMENT

ISSUE I

THIS COURT SHOULD ACCEPT JURISDICTION IN THIS CASE BECAUSE THE DECISION OF THE DISTRICT COURT EXPRESSLY AND DIRECTLY CONFLICTS WITH THE FIFTH DISTRICT ON THE MATTER OF WHETHER ON REMAND FOLLOWING REVERSAL ON APPEAL A TRIAL COURT MAY PROVIDE WRITTEN REASONS FOR IMPOSING A PRISON SENTENCE WHERE THE TOTAL SENTENCING POINTS ARE 22 OR LESS WHEN THE COURT FAILED TO PROVIDE THE REASONS IN A 3.800(b)(2) PROCEEDING.

Mr. Bryant was convicted felony petit theft. Although the criminal punishment code scoresheet reflected 17.1 total sentencing points, the trial judge sentenced the Appellant to five years incarceration. No written or oral reasons for the sentence were provided as required pursuant to section 775.082(10), Florida Statutes (2009). A motion to correct the sentencing error under Fla. R. Crim. P. 3.800(b)(2), was filed in the trial court. The motion was deemed denied when the trial court failed conduct a hearing within the sixty days provided.

On appeal the Second District reversed the sentence and remanded the case to the trial court for resentencing allowing the court to impose the same sentence if written reasons for the sentence are provided. On this point, the Court certified conflict with the Fifth District opinion issued in Goldberg v. State, 76 So. 3d 1072 (Fla. 5th DCA 2011). In Goldberg, the Fifth District held that because the trial court failed to make the written findings required under section 775.082(10), in response to the defendant's 3.800(b)(2), motion the court was limited to

imposing a non-state prison sanction upon resentencing.

Therefore, this Court has discretionary jurisdiction because of the certified conflict with the Fifth District. See Art. V, §3(b)(3), Fla. Const. (1980), and Fla. R. App. P. 9.030(a)(2)(A)(vi).

CONCLUSION

In light of the foregoing Petitioner respectfully requests that this Honorable Court grant discretionary review in this case.

CERTIFICATE OF SERVICE

I certify that a copy has been mailed to RONALD NAPOLITANO, Concourse Center #4, 3507 E. Frontage Rd. - Suite 200, Tampa, FL 33607, (813) 287-7900, on this _____ day of August, 2012.

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
Tenth Judicial Circuit
(863) 534-4200

MEGAN OLSON
Assistant Public Defender
Florida Bar Number 0656150
P. O. Box 9000 - Drawer PD
Bartow, FL 33831

mo