

IN THE SUPREME COURT OF FLORIDA

RAYMOND M. AUSTIN

Petitioner,

v.

CASE NO. SC14-2215

STATE OF FLORIDA,

L.T. Nos. 1D13-1046;
162010CF012766A
XXMA

Respondent.

ON DISCRETIONARY REVIEW
FROM THE FIRST DISTRICT COURT OF APPEAL

PETITIONER'S REPLY BRIEF

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ARGUMENT IN RESPONSE AND REBUTTAL TO
ARGUMENT PRESENTED IN ANSWER BRIEF

In its Answer Brief, the Respondent cites Jackson v. State, 983 So. 2d 562 (Fla. 2008) in support of its argument that sentence-correction provisions of Rule 3.800(b), Fla. R. Crim. P. bar appeal courts from considering unpreserved sentencing errors. (Answer Brief, P. 11).

Respondent further argues, at page 14 of its Answer Brief, that “. . . Petitioner’s argument that this court should adopt the view presented in Lightsey [Lightsey v. State, 112 So.3d 616 (Fla. 3d DCA 2013)] only considers the advantages to defense counsel and not to any of the other parties.”

However, Rule 3.800(b), Fla. R. Crim. P. sentence-correction motions are, as a general rule, far less laborious than appeals. There is no need to draft a notice of neither appeal nor any of the other documents needed to create the record on appeal. There are no briefs. There is no traveling to Tallahassee to present Oral Argument. Moreover, at least some inmates who prevail in Rule 3.800(b) sentence-correction motions will get out of prison soon enough to not bother with an appeal.

However, not all sentencing errors are readily apparent. As noted by the court in Reeves v. State, 920 So.2d 724 (Fla. 5th DCA 2006) “. . . . the Florida sentencing statutes have become more complex, entailing numerous reclassification, enhancement and minimum mandatory

provisions.”

Appellate attorneys, like all attorneys, seek input, ideas and advice from colleague attorneys. Occasionally, as an appeal brief is nearing completion, a sentencing error becomes apparent. In such an instance, and assuming the sentencing error is clear to the point that no evidentiary hearing is needed to establish the sentencing error, it is in the interests of the courts, counsel and parties that the appellate court be able to order the sentencing error corrected without further judicial proceedings or ado.

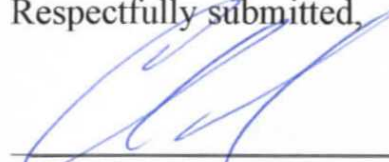
CONCLUSION

Based on the foregoing, Petitioner respectfully requests that this appellate court quash the First District’s decision in Austin v. State, 158 So.3d 648 (Fla. 1st DCA 2014) and approve the Third District’s decision Lightsey v. State, 112 So.3d 616 (Fla. 3d DCA 2013) allowing for appellate correction of clear but unpreserved sentencing errors.

CERTIFICATES OF SERVICE AND FONT SIZE

I HEREBY CERTIFY that a copy of the foregoing has been furnished via The Florida Courts E-Filing portal to Respondent's counsel at crimapptlh@myfloridalegal.com and to virginia.harris@myfloridalegal.com on this 1st day of June, 2015. I hereby certify that this brief uses Times New Roman 14 point font.

Respectfully submitted,



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