

IN THE FLORIDA SUPREME COURT

STATE OF FLORIDA,

Petitioner,

v.

TONY LEE MOORE,

Respondent.

CASE NO. 67,244

FILED
CLERK OF THE COURT
BY
Chief Deputy Clerk

RESPONDENT'S BRIEF ON THE MERITS

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IN THE FLORIDA SUPREME COURT

STATE OF FLORIDA, :
 :
 Petitioner, :
 :
 v. : CASE NO. 67,244
 :
 TONY LEE MOORE, :
 :
 Respondent. :
 _____ :

RESPONDENT'S BRIEF ON THE MERITS

I PRELIMINARY STATEMENT

Respondent was the defendant in the trial court and the appellant in the First District Court of Appeal. Petitioner was the prosecution and appellee respectively. The parties will be referred to herein as they appear before this Court.

References to petitioner's brief will be designated as "PB" followed by the appropriate page number in parenthesis.

II STATEMENT OF THE CASE AND FACTS

Respondent accepts petitioner's statement of the case and facts.

III SUMMARY OF ARGUMENT

Respondent contends in this brief that the requirement of a written statement of reasons for departure from the sentencing guidelines is mandatory, and the failure of the trial court to provide written reasons is reversible error. Based on recent decisions of this Court so interpreting Fla.Stat. §921.001(6) and Fla.R.Cr.P. 3.701, the decision of the court below must be affirmed.

IV ARGUMENT

ISSUE PRESENTED

IT IS REVERSIBLE ERROR FOR THE TRIAL COURT TO FAIL TO PROVIDE WRITTEN REASONS FOR DEPARTURE FROM THE SENTENCING GUIDELINES, EVEN THOUGH SUCH REASONS ARE TRANSCRIBED AND MADE A PART OF THE RECORD.

The legislature imposed by statute a requirement that sentencing guidelines shall provide that any sentences imposed outside the range recommended by the guidelines be explained in writing by the trial court judge.

Section 921.001(6), Florida Statutes (1983) (Emphasis added). This requirement is incorporated twice in the rules of procedure. Fla.R.Cr.P. 3.701(b)(6) and 3.701(d)(11).

In State v. Jackson, 10 FLW 564 (Fla. October 17, 1985), this Court recognized that the language of the statute and rules is mandatory, and the failure to provide written reasons for departure is reversible error. Petitioner essentially contends that this Court's holding is "an overly strict literal interpretation of the words 'written requirement'" (PB 5-6), despite the clear import of the language used in the statute and rules. Petitioner's argument is based on the erroneous assumption that the only purpose for a written statement of reasons for departure is to facilitate appellate review.

As noted by this Court in Jackson, written orders were mandated "to assure effective appellate review." Id. Appellate review, however, is not the sole purpose of written reasons. The committee note to Fla.R.Cr.P. 3.701(d)(11) says that the

written statement shall be made a part of the record, with sufficient specifi-

city to inform all parties, as well as the public, of the reasons for departure.

The legislature also imposed upon the Guidelines Commission and the Office of the State Courts Administration the obligation to conduct ongoing research on the impact of sentencing guidelines on sentencing practices. Section 921.001(7), Florida Statutes (1983). The manual prepared by the Sentencing Guidelines Commission indicates that revisions suggested by changing sentencing patterns of the sentencing judges will be brought to the attention of the commission primarily by means of written reasons for departure. These reasons are to be "documented and analyzed" in order to "determine the need for adjustments in individual offense categories." The commission concluded that it was "important that the sentence imposed and reasons for departure be accurately recorded." Sentencing Guidelines Manual at p. 7.

The guidelines process is one of constant revision. This process would be stymied without accurate reporting of the reasons for departure. If the Guidelines Commission were required to search appellate transcripts to determine the reasons for departure, the documentation and analysis would be an insurmountable task.

Even for appellate review purposes, written reasons are preferable for the sake of accuracy, certainty and efficiency. As noted by this Court in Jackson, oral sentencing pronouncements may include statements which are unrelated to reasons relied upon for departure. Litigants and appellate courts should not be forced to sift through lengthy colloquies to discover the real basis for departure.

Contrary to petitioner's suggestion, the conscientious efforts of trial judges to comply with the rules of procedure cannot supplant the mandate of the legislature and this Court. This Court correctly held that a written statement of reasons for departure was required, and the decision of the court below should be affirmed. See State v. Hernandez, No. 66,875 (Fla. December 5, 1985); Burke v. State, No. 66,091 (Fla. December 5, 1985).

V CONCLUSION

The District Court of Appeal, First District, correctly interpreted Fla.R.Cr.P. 3.701 to require a written statement of reasons for departure from the sentencing guidelines.

Based on the authority of State v. Jackson, 10 FLW 564 (Fla. October 17, 1985), the decision of the First District Court of Appeal should be approved.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above Respondent's Brief on the Merits has been furnished by hand to Assistant Attorney General Wallace Allbritton, The Capitol, Tallahassee, Florida 32301; and by U.S. Mail to respondent, TONY LEE MOORE, #727517, Post Office Box 699, Sneads, Florida 32460 on this 9th day of December, 1985.

Paula S. Saunders
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