

IN THE SUPREME COURT OF FLORIDA

HUGH FRANCIS BOEHMER,)
)
 Petitioner,)
)
 vs.)
)
 STATE OF FLORIDA,)
)
 Respondent.)

CASE NO. 67,446

RESPONDENT'S BRIEF ON THE MERITS

FILED

SID J. WHITE

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CLERK, SUPREME COURT

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SUMMARY OF ARGUMENT

Where the reasons for departure dictated into the record at sentencing are clear (and convincing), transcription of the reasons by the court reporter meets the requirements of Rule 3.701(d)(11).

POINT ON APPEAL

WHETHER DICTATION INTO THE RECORD
AND SUBSEQUENT TRANSCRIPTION SATISFIES
THE REQUIREMENT THAT REASONS FOR
DEPARTURE BE IN WRITING.

Where the trial court's reasons for departure are sufficiently clear and convincing as articulated at sentencing, there seems little purpose in remanding for resentencing to re-transcribe the identical language of the court onto a separate sheet of paper. If a trial judge can dictate reasons to his secretary who takes them in shorthand, then types them out, he should be allowed to make similar use of the court reporter. Since the reasons for departure must be articulated at time of sentencing¹, re-transcription in writing is not only duplicitious, it also creates greater potential for administrative problems, such as instances when the separate written reasons do not exactly reflect the oral articulation. Appellant's concern that the transcribed reasons will not be sufficiently clear if articulated orally does not require a separate writing, but, rather, merely reflects the need that reasons under the guidelines be clear and convincing, as articulated at sentencing. If the articulated reasons are not sufficiently clear, then remand is appropriate, irrespective of whether the reasons are articulated by transcription or in the judge's own hand. The mechanical mode of reducing reasons to written form is essentially inconsequential in the sentencing process, and an unworthy concern

¹Fla. R. Crim. P. 3.701, Committee Note (d)(11).

of an already overburdened judiciary. Dictation into the record, with subsequent transcription, has long been recognized as sufficient to meet the requirement of a "writing" Thompson v. State, 328 So.2d 1 (Fla. 1976), and there is no sound reason for a different result here.

CONCLUSION

Where the reasons for departure dictated into the record at sentencing are clear (and convincing), transcription of the reasons by the court reporter meets the requirements of Rule 3.701(d)(11).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing copy of respondent's brief on the merits has been furnished by mail to: Christopher S. Quarles, Assistant Public Defender, 112 Orange Avenue, Suite A, Daytona Beach, Florida 32014, on this 16th day of September, 1985.

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