

IN THE SUPREME COURT OF FLORIDA

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CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

CASE NO. 67,787

STATE OF FLORIDA,)
)
 Petitioner,)
)
 vs.)
)
 JESSE JAMES TISDALE,)
)
 Respondent.)
 _____)

RESPONDENT'S BRIEF ON JURISDICTION

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

DANIEL J. SCHAFER
ASSISTANT PUBLIC DEFENDER
112 Orange Avenue, Suite A
Daytona Beach, Florida 32014
Phone: 904/252-3367

ATTORNEY FOR RESPONDENT

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CASES CITED:

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The Florida Bar: Amendment to Rules of Criminal
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OTHER AUTHORITIES:

Article I, Section 10, United States Constitution 1

Article I, Section 10, Florida Constitution 1

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vs.)
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RESPONDENT'S BRIEF ON JURISDICTION

SUMMARY OF ARGUMENT

Respondent agrees that the Fifth District Court's decision in this cause did cite cases suggesting reliance on the ex post facto doctrine of the United States and Florida Constitution. Respondent respectfully contends that the decision in his case is not in conflict with the decisions of this Court cited herein.

ARGUMENT

WHETHER THIS COURT SHOULD EXERCISE
ITS DISCRETIONARY JURISDICTION TO
REVIEW THE DECISION OF THE DISTRICT
COURT OF APPEAL IN THIS CASE.

In its jurisdictional brief the State suggests two bases for discretionary review in this case. As to the State's Point I, Respondent agrees that the Fifth District Court in its decision of this case did cite cases suggesting reliance on the ex post facto doctrine of the United States and Florida Constitution. See, Art. I, §10, U.S. Const. and Art. I, §10, Fla. Const. The District Court did not directly cite these constitutional provisions.

As for the State's Point II, Respondent contends the District Court's decision is not in direct conflict with May v. Florida Parole and Probation Commission, 435 So.2d 834 (Fla. 1983), or Lee v. State, 294 So.2d 305 (Fla. 1974). In Respondent's case the trial court did not find clear and convincing reasons to depart from the sentencing guidelines. Therefore Respondent had much more than a "tenuous expectancy regarding probable punishment". He in fact had a legal right to be sentenced within the guideline range. When the guidelines were amended subsequent to the commission of his offense the quantum of punishment which could be imposed was directly increased. At the time Respondent committed this crime, Committee Note(d) (12) to Florida Rule of Criminal Procedure 3.701 provided in relevant part:

If a split sentence is imposed (i.e., a combination of state prison and probation supervision), the incarceration portion imposed shall not be less than the minimum of the guideline range, and the total sanction imposed cannot exceed the maximum guideline range.

That rule was subsequently amended, effective July 1, 1984. The Florida Bar: Amendment to Rules of Criminal Procedure (3.701, 3.988-Sentencing Guidelines), 451 So.2d 824 (Fla. 1984); Ch. 84-328, Laws of Florida. Committee Note(d)(12), now reads:

If a split sentence is imposed (i.e., a combination of state prison and probation supervision), the incarcerative portion imposed shall not be less than the minimum of the guideline range, nor exceed the maximum of the range. The total sanction (incarceration and probation) shall not exceed the term provided by general law.

(emphasis added).


This rule change directly increases the total sanction which may be imposed in cases where departure from the guidelines is inappropriate. Therefore Respondent contends the decision in his case is distinguishable from May, supra, and Lee, supra.

CONCLUSION

Respondent requests that this Honorable Court decline to exercise jurisdiction in this cause.

Respectfully submitted,

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT



DANIEL J. SCHAFFER
ASSISTANT PUBLIC DEFENDER
112 Orange Avenue, Suite A
Daytona Beach, Florida 32014
Phone: 904/252-3367

ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been mailed to the Honorable Jim Smith, Attorney General in his basket at the Fifth District Court of Appeal and to Mr. Jesse James Tisdale, Inmate No. C044930, P.O. Box 699, Sneads, Florida 32460 on this 12th day of November 1985.



DANIEL J. SCHAFFER
ASSISTANT PUBLIC DEFENDER