

IN THE FLORIDA SUPREME COURT

STATE OF FLORIDA,

Petitioner,

v.

Case No. 68030

LINDA PETE, a/k/a  
LINDA L. THOMAS,

Respondent.

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DISCRETIONARY REVIEW OF DECISION OF  
DISTRICT COURT OF APPEAL  
SECOND DISTRICT OF FLORIDA

BRIEF OF PETITIONER ON JURISDICTION

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OTHER AUTHORITIES:

Article V, Section 3(b)3, Constitution of the State of Florida	4
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STATEMENT OF THE CASE AND FACTS

Respondent pled guilty to two charges of delivery of cocaine and five charges of delivery of heroin. She was sentenced pursuant to the sentencing guidelines to 30 months incarceration on one of the charges. Concurrent probationary terms of 15 years each were imposed on the other six charges.

Seven separate informations charging these offenses which occurred on different dates between december 21, 1983 and January 17, 1984 were filed in Hillsborough County Circuit Court. In Circuit Court Case Nos. 84-3186 and 84-3196, Respondent was charged April 12, 1984 with counts of Delivery of Cocaine and Possession of Cocaine in both Informations (R4,135). In Circuit Court Case Nos. 84-3187, 84-3188,84-3189, 84-3190 and 84-3197, Respondent was also charged April 12, 1984 by two-count Informations with Delivery of Heroin and Possession of Heroin (R 32,57,82,109,161).

On May 29, 1984, Respondent entered pleas of guilty to each of the drug delivery charges (R196-199). The State agreed to nolle prosee the drug possession charges (R196-199). The court ordered a pre-sentence investigation and set sentencing for June 29, 1984 (R 199).

On June 29, 1984, Appellant was not brought before the court (R1,28,54,79,105,131,157).

A sentencing hearing was held July 13, 1984 (R188-192). A guidelines scoresheet was presented which totaled 107 points in Category 7, yielding a recommended sentence of community control or

12-30 months incarceration (R16-17). The Court sentenced Appellant to 30 months imprisonment on Circuit Court Case No. 84-3197 (R 191-192). On the other six cases, she was adjudicated guilty and sentenced to concurrent fifteen year terms of probation (R191-192).

On October 11, 1985, the Second District Court of Appeal entered its opinion on appeal. The Second District reversed the Respondent's sentence and remanded the cause to the trial court for resentencing in accordance with the guidelines in effect when the crimes were committed. The Second District reversed the respondent's sentence on the grounds that the amended guidelines could not be retroactively applied. The Second District opined that the application of an amendment to the guidelines (after the effective date of the amendment) to crimes committed prior to the amendment was an improper retroactive application of the amendment to Rule 3.701(d) (12), Florida Rules of Criminal Procedure.

On October 21, 1985, Petitioner filed a motion for rehearing. Rehearing was denied on November 20, 1985. Notice to invoke the discretionary jurisdiction of this court was filed on December 9, 1985.

SUMMARY OF ARGUMENT

By reversing the trial court's sentence on the grounds that the amendment to the guidelines could not be applied to crimes committed before the effective date of the amendment and directing that upon remand sentencing be in accordance with the rules in existence at the time of the crime, the Second District's opinion expressly and directly conflicts with this Courts decision in State v. Jackson, 10 F.L.W. 564 (Fla. Oct. 17, 1985), on the same matter of law.

ARGUMENT

ISSUE I

THE OPINION OF THE SECOND DISTRICT  
COURT OF APPEAL IS IN CONFLICT  
WITH THIS COURTS DECISION IN JACKSON V. STATE,  
10 F.L.W. 564 (Fla. Oct. 17, 1985).

Article V, Section 3(b)3, Constitution of the State of Florida, and Rule 9.030(A)(2)A(iv);, Florida Rules of Appellate Procedure provide discretionary jurisdiction in this court to review opinions of the District Court which are expressly and directly in conflict with prior decisions of this Court on the same matter of law.

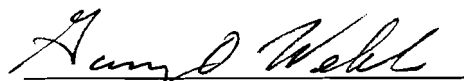
In the case sub judice, the Second District held that the July 1, 1984 amendment to Rule 3.701(d)(12), Florida Rules of Criminal Procedure, could not be used at a July 13, 1984 sentencing hearing since the application of the amended rule would have a "disadvantageous effect" upon those whose crimes were committed before the effective date of the amended rule. The Second District then remanded the cause with instructions that the guideline rules in effect at the time of the crime be used. In State v. Jackson, 10 F.L.W. 564 (Fla. Oct. 17, 1985), the Court rejected the claim that amendments to the guideline which resulted in a greater presumptive sentence could not be applied to crimes committed before the effective date of the amended rule and stated that on remand the trial court use the guidelines in effect at the time of sentencing. As such, the Second District's opinion in Jackson, supra, and discretionary jurisdiction is available to the petitioner in this court.

CONCLUSION

WHEREAS the Second District's opinion is expressly and directly in conflict with this Court's opinion on the same matter of law, Petitioner prays that this court will exercise its discretionary jurisdiction and review the opinion of the Second District.

Respectfully submitted,

JIM SMITH  
ATTORNEY GENERAL

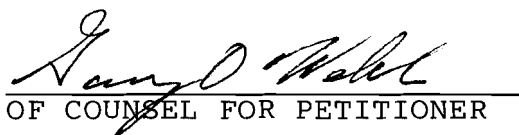


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COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by regular U.S. Mail to Douglas S. Connor, Assistant Public Defender, Hall of Justice Building, Appellate Division, P. O. Box 1640, Bartow, Florida 33830 this 18th day of December, 1985.



OF COUNSEL FOR PETITIONER