

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,)
)
 Petitioner)
)
 vs.)
)
 PHILLIP LEE MOULTRIE,)
)
 Respondent.)
 _____)

CASE NO 68,945

pl

RESPONDENT'S BRIEF ON JURISDICTION

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

MICHAEL L. O'NEILL
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SUMMARY OF THE ARGUMENT

The decision of the Fifth District Court of Appeal vacating Moultrie's sentence and remanding for resentencing was based on two factors, and only one corresponds to the question certified previously in Vicknair and which is presently in dispute among the District Courts of Appeal. The other, absence of written reasons, requires a remand in its own right and until a statement of such reasons is given it is premature for this Court to consider the relationship between the habitual offender statute and the sentencing guidelines on the basis of this case.

ARGUMENT

IT IS PREMATURE FOR THIS COURT TO
GRANT DISCRETIONARY JURISDICTION IN
THIS CASE TO REVIEW THE DECISION OF
THE DISTRICT COURT.

The District Court decision in this case vacating the sentence and remanding for resentencing was based on two factors: reliance on the defendant's criminal record alone to adjudicate him under the status of an habitual offender; the absence of a written statement of reasons for departure from the guidelines sentence. Respondent agrees with Petitioner that the first is the same point of law involved in Vicknair v. State, 483 So.2d 896 (Fla. 5th DCA 1986), and standing alone would warrant the same certified question. However, the second point, absence of written reasons, would itself warrant a remand under State v. Jackson, 478 So.2d 1054 (Fla. 1985).

At such a resentencing the judge has the opportunity to compose the required statement of reasons supporting both the requirements of the habitual offender statute, Eutsey v. State, 383 So.2d 219 (Fla. 1980), and the sentencing guidelines. Only after a resentencing will there be the appropriate occasion to further decide the relationship between the habitual offender statute and the sentencing guidelines. In the meantime this Court should not exercise its discretionary jurisdiction in this case.

CONCLUSION

BASED UPON the argument made and the authority cited herein, Respondent asks this Honorable Court not to grant discretionary jurisdiction in the case to review the decision of the District Court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon the Honorable Jim Smith, Attorney General, 125 N. Ridgewood Avenue, Second Floor, Daytona Beach, Florida 32014; and mailed to Phillip Lee Moultrie, Inmate No. 322694, DeSoto Correctional Institute, Post Office Drawer 1072, Arcadia, Florida 33821, on this 9th day of July, 1986.

Michael L. O'Neill

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