

IN THE SUPREME COURT OF FLORIDA

VAUGHN R. SIMPSON,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

CASE NO. 70,561

PETITIONER'S BRIEF ON THE MERITS

MICHAEL E. ALLEN
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

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II STATEMENT OF THE CASE AND FACTS

As the statement of the case and facts, petitioner incorporates by reference as if fully set out herein the three opinions issued below in this case by the District Court of Appeal, First District: Simpson v. State, 12 FLW 469 (Fla. 1st DCA February 10, 1987) (Simpson I); Simpson v. State, 12 FLW 1035 (Fla. 1st DCA, opinion on motion for rehearing filed April 15, 1987) (Simpson II); and, Simpson v. State, 12 FLW 1151 (Fla. 1st DCA, opinion on motion to strike motion for rehearing and to withdraw opinion on rehearing filed May 5, 1987) (Simpson III). In Simpson I, the lower court certified the following issue to this Court as involving a question of great public importance:

IS THE REGULARITY AND FREQUENCY,
i.e., THE TEMPORAL PROXIMITY, OF
OFFENSES SCORED ON THE SENTENCING
GUIDELINES SCORESHEET A VALID
GROUND FOR DEPARTURE FROM THE
GUIDELINES RECOMMENDED SENTENCE?

III SUMMARY OF ARGUMENT

Since the actual argument is well within the page limitations for a summary of argument, to avoid needless repetition a formal summary of argument will be omitted here.

IV ARGUMENT

THE REGULARITY AND FREQUENCY, i.e., THE TEMPORAL PROXIMITY, OF OFFENSES SCORED ON THE SENTENCING GUIDELINES IS NOT A VALID GROUND FOR DEPARTURE FROM THE GUIDELINES RECOMMENDED SENTENCE.

Petitioner urges this Court to answer the certified question in the negative and hold that, in this case, the trial court erred in reciting the timing of the offenses as a ground for departing from the guidelines. Petitioner believes this result is compelled by this Court's recent decision in State v. Rousseau. 12 FLW 291 (Fla. June 11, 1987).

In Rousseau, the trial court imposed a departure sentence listing five reasons for departure, the first being that the defendant "...committed three burglaries in a three-week time span..." 12 FLW at 292. This Court held this reason was not valid, stating:

The first of these reasons is that Rousseau committed three burglaries in a three-week period. The district court evidently viewed the "temporal circumstances" of these crimes to justify departure. We disagree with this conclusion. Each of these three burglaries was scored as a primary offense in determining Rousseau's guidelines sentence. The record reveals no additional facts concerning the timing of these offenses which were not already factored into the guidelines score sheet. Therefore, this reason cannot justify departure.

12 FLW at 291.

In the instant case the trial court wrote that one attempted armed robbery and attempted first degree murder took

place on June 12, 1985, whereas the remaining offenses occurred two days later, on June 14, 1985. 12 FLW at 469. As was true in Rousseau, all of these offenses were factored into the sentencing guidelines score sheet. Also as was true in Rousseau, the record reveals no additional facts concerning the timing of the offenses which were not already factored into the guidelines score sheet. Rousseau is directly on point and, accordingly, petitioner urges the Court to follow Rousseau and answer the certified question in the negative.

V CONCLUSION

Based upon the foregoing petitioner requests this Court to answer the question certified in Simpson I in the negative.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Petitioner's Brief on the Merits has been furnished by hand delivery to **Mark C. Menser**, Assistant Attorney General, The Capitol, Tallahassee, Florida, and a copy has been mailed to petitioner, Mr. Vaughn Simpson, #100131, Cross City Correctional Institution, Post Office Box 1500, Cross City, Florida, 32628, this 15th day of June, 1987.


CARL S. MCGINNES