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IN THE SUPREME COURT OF FLORIDA

AIDA HERNANDEZ,  
Petitioner,  
v.  
STATE OF FLORIDA,  
Respondent.

4  
70,210

CASE NO.  
Fourth DCA Case No. 87-2198

**FILED**

SD J. WHITE

MAY 30 1989

CLERK, SUPREME COURT

By \_\_\_\_\_  
Deputy Clerk

PETITIONER'S BRIEF ON JURISDICTION

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POINT INVOLVED

THE DECISION OF THE COURT OF APPEAL IN THIS CASE DIRECTLY AND EXPRESSLY CONFLICTS WITH A DECISION OF THIS COURT AND WITH A DECISION OF ANOTHER DISTRICT COURT OF APPEAL ON THE QUESTION OF WHETHER A COMMISSION OF DRUG TRAFFICKING IN A PROFESSIONAL MANNER IS A VALID REASON FOR A GUIDELINES SENTENCE DEPARTURE.	4
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PRELIMINARY STATEMENT

The Petitioner was the appellant in the Fourth District Court of Appeal and the defendant in the trial court. The Respondent was the appellee and the prosecution, respectively, in those lower courts. In the brief, the parties will be referred to as they appear before this Honorable Court.

The symbol "A" will be used to refer to the appendix which includes the decision of the district court of appeal.

STATEMENT OF THE CASE AND FACTS

Aida Hernandez was convicted of trafficking in more than four hundred (400) grams of cocaine and conspiracy to traffic in more than four hundred (400) grams of cocaine. The trial court sentenced her to concurrent twenty-five (25) year prison sentences in excess of the sentencing guidelines recommendation. As grounds for its departure sentence, the trial court relied on its characterization that the crime was committed in a professional manner and on the amount of drugs involved.

On direct appeal, the Fourth District Court of Appeal reversed the sentence, correctly concluding that the amount of drugs involved was not a valid reason for departure, but finding the first reason given, the professional manner in which the offense was committed, was a valid basis for a departure sentence.

Ms. Hernandez' motion for rehearing from the Fourth District Court of Appeal's decision was denied on April 26, 1989. Notice that she sought to invoke the discretionary review of this Court was filed on May 23, 1989.

This jurisdictional brief follows.

SUMMARY OF THE ARGUMENT

The decision of the court of appeal in this case directly and expressly conflicts with a decision of this Court and with a decision of another district court of appeal on the question of whether commission of drug trafficking in a professional manner is a valid reason for a guidelines sentence departure.

## ARGUMENT

THE DECISION OF THE COURT OF APPEAL IN THIS CASE DIRECTLY AND EXPRESSLY CONFLICTS WITH A DECISION OF THIS COURT AND WITH A DECISION OF ANOTHER DISTRICT COURT OF APPEAL ON THE QUESTION OF WHETHER A COMMISSION OF DRUG TRAFFICKING IN A PROFESSIONAL MANNER IS A VALID REASON FOR A GUIDELINES SENTENCE DEPARTURE.

In the present case, the Fourth District Court of Appeal upheld as a valid reason for a guidelines departure sentence the trial court's finding that the drug trafficking for which Ms. Hernandez was convicted was committed in a professional manner. In Collins v. State, 535 So.2d 661 (Fla. 3d DCA 1988), the Third District Court of Appeal held that "executing the crimes in a professional manner" was not a valid reason for a guidelines departure "because the stated reason is an inherent component of the crime of trafficking in cocaine." Id. at 663. Indeed, in Collins, the state conceded as much. This Court has itself come to a similar conclusion in State v. Fletcher, 530 So.2d 296 (Fla. 1988), wherein it agreed that a finding that the defendant "planned and calculated the crime with sophistication and well-organized premeditation including 'months of plotting and scheming,'" was not a valid departure reason because "all large drug trafficking cases, not to mention those involving a conspiracy, would 'inherently' involve calculated premeditation and planning." Id. at 297.

Consequently, the decision of the district court of appeal in the present case directly and expressly conflicts with the decision of the Third District Court of Appeal in Collins and

with this Court's own decision in Fletcher. This Court thus has jurisdiction to review the instant cause. Article V, Section 3(b)(3), Florida Constitution.

Moreover, in order to maintain consistency between the decisions of the courts of this state in interpreting the sentencing guidelines, which are utilized in imposing sentences in all drug trafficking cases in this state, this Court should accept jurisdiction of this cause and resolve the conflict presented by the district court of appeal's decision below.


CONCLUSION

The decision of the court of appeal in this case directly and expressly conflicts with a decision of this Court and with a decision of another district court of appeal on the question of whether commission of drug trafficking in a professional manner is a valid reason for a guidelines sentence departure.

Moreover, in order to maintain consistency between the decisions of the courts of this state in interpreting the sentencing guidelines, which are utilized in imposing sentences in all drug trafficking cases in this state, this Court should accept jurisdiction of this cause and resolve the conflict presented by the district court of appeal's decision below.

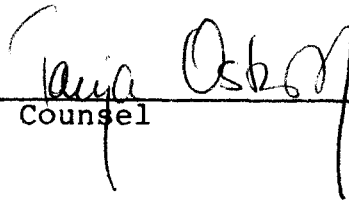
Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to JAMES J. CARNEY, Assistant Attorney General, Elisha Newton Dimick Building, Suite 204, 111 Georgia Avenue, West Palm Beach, Florida, 33401 by courier this 26th day of May, 1989.

  
\_\_\_\_\_  
Of Counsel

A P P E N D I X

Decision of Fourth District Court of Appeal,  
Hernandez v. State.

Order denying Motion for Rehearing.

State v. Fletcher, 530 So.2d 296 (Fla. 1988).

Collins v. State, 535 So.2d 661 (Fla. 3d DCA  
1988).