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IN THE SUPREME COURT OF FLORIDA

CASE NO. 75,792

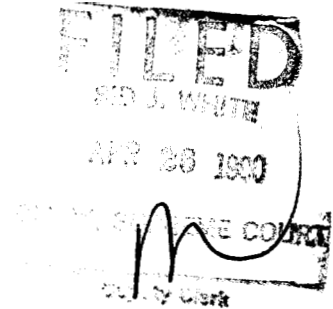
VIRGIL ROBINSON,

Petitioner,

vs.

THE STATE OF FLORIDA,

Respondent.



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ON PETITION FOR DISCRETIONARY REVIEW

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BRIEF OF RESPONDENT

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TABLE OF CITATIONS

Cases

Page

Ree v. State,  
14 F.L.W. 565 (Fla. 1989)..... 4,5

TABLE OF CONTENTS

	<u>PAGE</u>
INTRODUCTION.....	1
STATEMENT OF THE CASE AND FACTS.....	2
QUESTION PRESENTED.....	3
SUMMARY OF THE ARGUMENT.....	4
ARGUMENT.....	5
 THE DISTRICT COURT OF APPEAL'S DECISION IS CONSISTENT WITH THIS COURT'S DECISION IN <u>REE v. STATE</u> , 14 F.L.W. 565 (FLA. 1989).  	
CONCLUSION.....	6
CERTIFICATE OF SERVICE.....	6

RODUCTION

The State of Florida was the prosecution in the trial court and the appellee in District Court of Appeal, Third District. The petitioner, Virgil Robinson, was the defendant in the trial court and the appellant in the District Court of Appeal. In this brief the parties shall be referred to as they stood in the trial court.

STATEMENT OF THE CASE AND FACTS

The State accepts the defendant's Statement of the Case and Facts as a substantially true and correct reflection of the events below.

QUESTION PRESENTED

WHETHER THE DISTRICT COURT OF APPEAL, THIRD DISTRICT HAS ISSUED AN OPINION WHICH CONFLICTS WITH THIS COURT'S OPINION IN REE v. STATE, 14 F.L.W. 565 (FLA. 1989).

### SUMMARY OF THE ARGUMENT

Defendant's position that the opinion of the District Court of Appeal is in conflict with Ree v. State, 14 F.L.W. 565 (Fla. 1989) is erroneous. Although the trial court incorrectly issued its written reasons after the sentencing hearing there is nothing in the language of Ree or other authority that the trial court is subsequently bound to the guidelines. After hearing testimony as to sentencing the trial court may sentence outside the guidelines when the evidence so indicates. The trial court is bound by Ree to enter written reasons for such departure contemporaneously.

ARGUMENT

THE DISTRICT COURT OF APPEAL'S  
DECISION IS CONSISTENT WITH THIS  
COURT'S DECISION IN REE v. STATE, 14  
F.L.W. 565 (FLA. 1989).

The rationale of Ree v. State, 14 F.L.W. 565 (Fla. 1989) is that reasons for departure must be based on evidence presented at the sentencing and those reasons must be written down by the trial judge at the time of sentencing. If the evidence dictates departure, it is not logical that the trial judge be bound to the guidelines. "Fundamental principals of justice require that decisions restricting a person's liberty to be made only after a neutral magistrate gives due consideration to any argument and evidence that are proper." Ree at 3.

CONCLUSION

For the foregoing argument and authority, the State of Florida requests this Court to deny discretionary review in this cause.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing ANSWER BRIEF was furnished by mail to ROBERT KALTER, Assistant Public Defender, 1351 N.W. 12th Street, Miami, Florida 33125, on this 24th day of April, 1990.



**PATRICIA ANN ASH**  
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