

IN THE SUPREME COURT OF FLORIDA

CASE NO. 75,793

MARK KEPNER,  
Petitioner,

vs.

THE STATE OF FLORIDA,  
Respondent.

FILED  
APR 9 1975

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ON PETITION FOR DISCRETIONARY REVIEW

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BRIEF OF PETITIONER

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INTRODUCTION

The petitioner, Mark Kepner, was the defendant in the trial court and the appellee in the District Court of Appeal of Florida, Third District. The respondent, the State of Florida, was the prosecution in the trial court and the appellant in the District Court of Appeal. In this brief, the appellee will be referred to as petitioner and the appellant as the state.

The symbol "A" will designate the appendix to this brief. All emphasis is supplied unless the contrary is indicated.

STATEMENT OF THE CASE AND FACTS

Petitioner entered a guilty plea before the trial court for several offenses committed in 1989. The trial court sentenced Petitioner pursuant to the Youthful Offender Act. The sentence given by the trial court was less than the recommended guideline sentence. The trial court did not give written reasons for the sentence. The State of Florida appealed the sentence to the Third District Court of Appeal and argued that written reasons are required for a downward departure sentence even if the defendant is sentenced as a Youthful Offender.

The Third District Court of Appeal agreed with the State of Florida and held that written reasons are required for a downward departure sentence even when the sentence is pursuant to the Youthful Offender Act. In its opinion, the Third District Court of Appeal certified that their opinion was in direct conflict with the Fourth District Court of Appeal's decision in State v. Green, 541 So.2d 789 (Fla. 4th DCA 1988) and the Second District Court of Appeal's decision in State v. Nealy, 532 So.2d 1117 (Fla. 2d DCA 1988) wherein both courts held the Youthful Offender Act does not require that the court give written reasons for a downward departure sentence given pursuant to that act.

A timely notice to invoke this court's discretionary jurisdiction was filed. This petition follows.

QUESTION PRESENTED

THE THIRD DISTRICT COURT OF APPEAL'S DECISION DIRECTLY CONFLICTS WITH THE SECOND DISTRICT COURT OF APPEAL'S DECISION IN STATE V. NEALY, 532 So.2d 1117 (Fla. 2d DCA 1988) AND THE FOURTH DISTRICT COURT OF APPEAL'S DECISION IN STATE V. GREEN, 541 So.2d 789 (Fla. 4th DCA 1989).

SUMMARY OF ARGUMENT

The trial court sentenced petitioner as a youthful offender. The sentence was less than the recommended guideline sentence. The trial court did not give written reasons for the departure sentence. The Third District Court of Appeal reversed the trial court and held that written reasons are required for a downward departure sentence even if the defendant is sentenced as a youthful offender. In its opinion the Third District Court of Appeal certified that its opinion directly conflicts with State v. Nealy, supra, and State v. Green, supra, since both of those cases held that no written reasons are required for a downward departure sentence if the defendant is sentenced pursuant to the Youthful Offender Act. Since a direct conflict now exists as to whether a trial court must give written reasons for a downward departure sentence when sentencing a defendant as a Youthful Offender this court should accept jurisdiction of this case to resolve the conflict.

## ARGUMENT

THE THIRD DISTRICT COURT OF APPEAL'S DECISION DIRECTLY CONFLICTS WITH THE SECOND DISTRICT COURT OF APPEAL'S DECISION IN STATE V. NEALY, 532 So.2d 1117 (Fla. 2d DCA 1988) AND THE FOURTH DISTRICT COURT OF APPEAL'S DECISION IN STATE V. GREEN, 541 So.2d 789 (Fla. 4th DCA 1989).

The trial court sentenced petitioner as a youthful offender. The sentence was less than the recommended guideline sentence. The trial court did not give written reasons for the departure sentence. The Third District Court of Appeal reversed the trial court and held that written reasons are required for a downward departure sentence even if the defendant is sentenced as a youthful offender. In its opinion, the Third District Court of Appeal certified that its opinion directly conflicts with State v. Nealy, supra, and State v. Green, supra.

In both State v. Nealy, supra, and State v. Green, supra, the courts held that no written reasons were required for a downward departure sentence if the defendant is sentenced as a Youthful Offender since the Youthful Offender Act specifically states that written reasons are required for an upward departure sentence when an individual is sentenced as a Youthful Offender and is silent on whether written reasons are necessary for a downward departure sentence pursuant to the Youthful Offender Act.

Since a direct conflict now exists between different District Court of Appeals on the important issue as to whether a trial court must give written reasons to justify his or her

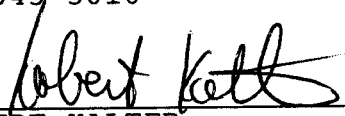
decision to sentence a defendant as a Youthful Offender if the sentence is less than than the recommended guideline sentence, this court should accept jurisdiction of this case to resolve the conflict.

CONCLUSION

BASED on the foregoing, petitioner requests this Court to grant discretionary review in this cause.


Respectfully submitted,

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BY:   
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered by mail to the Office of the Attorney General, 401 N.W. 2nd Avenue, Suite N-921, Miami, Florida this 3<sup>rd</sup> day of April, 1990.

  
ROBERT KALTER  
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