

FILED

SID J. WHITE

OCT 8 1998

By *[Signature]*  
Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

VASTEN BLAIR, :  
 :  
 Petitioner, :  
 :  
 v. :  
 :  
 STATE OF FLORIDA, :  
 :  
 Respondent. :  
 \_\_\_\_\_/ :

CASE NO. 75,937

PETITIONER'S REPLY BRIEF

BARBARA M. LINTHICUM  
PUBLIC DEFENDER  
SECOND JUDICIAL CIRCUIT

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Fourth Floor North  
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ATTORNEY FOR PETITIONER

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REPLY BRIEF OF APPELLANT

I. PRELIMINARY STATEMENT

Vasten Blair, petitioner, relies on his initial brief to reply to the arguments advanced in the State's answer brief except for the following addition to Issue III.

ISSUE III

THE COURT ERRED IN DEPARTING UPWARD FROM  
THE GUIDELINES AND SENTENCING APPELLANT TO  
LIFE IMPRISONMENT ON THE ROBBERY CONVICTION

Respondent states in its brief that this issue was not preserved by petitioner either by objection in the trial court or by presentation as an issue on appeal before the First District Court of Appeal.

In fact, petitioner's trial counsel did object to the state's request that the trial judge depart from the guidelines on any basis, specifically disputing the prosecutor's contention that petitioner's prior record established an escalating pattern of criminal conduct. Appellant's trial counsel, after summarizing petitioner's prior record, stated to the trial judge at sentencing:

...And so -- And they were also removed by some four years from the grand theft auto convictions, which certainly doesn't indicate any escalating pattern of criminal activity, as set out by the Court and as concerned in the Weens case that the State has furnished. So, uhm, it would not appear that it would be appropriate for the Court to consider that as a basis for departing from the guidelines (R 355).

The issue was also raised on appeal by petitioner, briefed, and ruled on by the First District Court of Appeal.

Therefore, the State's argument that the issue was not preserved for appeal is without merit.

Based on the foregoing argument and citation of authority, and that advanced in petitioner's initial brief on the merits,

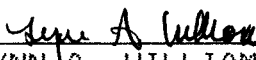
petitioner asks this Court to reverse the departure sentence on the robbery conviction and to remand for resentencing within the guidelines.

### III. CONCLUSION

For the reasons expressed in his initial brief and in this reply brief, petitioner requests this Court reverse the portion of the District Court of Appeal's decision which authorizes a departure from the guideline sentence for petitioner's robbery conviction, and further requests this Court, under Issue II (argued in petitioner's initial brief) order that any sentence pronounced on petitioner's robbery conviction not be for life but for a term of years.

Respectfully submitted,

BARBARA M. LINTHICUM  
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ATTORNEY FOR PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing  
has been furnished by hand delivery to Bradley Bischoff,  
Assistant Attorney General, The Capitol, Tallahassee, Florida,  
32302, this 8<sup>th</sup> day of October, 1990, and a copy has been  
mailed to petitioner, Vasten Blair.

Lynn A. Williams  
LYNN A. WILLIAMS  
Assistant Public Defender