

# Supreme Court of Florida

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No. 76,936  
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MARSHALL SANDERS CROCKER, Petitioner,

vs.

STATE OF FLORIDA, Respondent.

[June 6, 1991]

BARKETT, J.

We have for review Crocker v. State, 568 So.2d 116 (Fla. 5th DCA 1990), which certified the following as a question of great public importance:

In light of Weems [v. State, 469 So.2d 128 (Fla. 1985)], to what extent may a trial court consider a non-scoreable juvenile record in aggravating a sentence above the guidelines range?

Crocker, 568 So.2d at 116. We have jurisdiction pursuant to article V, section 3(b)(4) of the Florida Constitution.

This Court answered the same certified question in Puffinberger v. State, No. 75,917 (Fla. June 6, 1991), where we held that an unscorable juvenile record may be used as a basis to depart from the guidelines only if the record is significant; and if the record is used to depart, the departure sentence can be no greater than the sentence would have been had the juvenile record been scored in calculating the guidelines sentence. Upon reviewing the record in this case, we conclude that Crocker's juvenile record was not significant as explained in Puffinberger, and therefore the district court erred by affirming the guidelines departure. We quash Crocker to the extent that it conflicts with this decision, and remand this cause for further proceedings consistent with this opinion.

It is so ordered.

SHAW, C.J., and OVERTON, McDONALD, GRIMES, KOGAN and HARDING, JJ., concur.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

Application for Review of the Decision of the District Court of  
Appeal - Certified Great Public Importance

Fifth District - Case No. 89-1555

(Putnam County)

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