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**FILED**  
SID J. WHITE  
DEC 18 1991  
CLERK, SUPREME COURT  
By \_\_\_\_\_  
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

JOSE REINALDO AIRA,  
Petitioner,

v.

CASE NO. 78,486

STATE OF FLORIDA,  
Respondent.

\_\_\_\_\_ /

MERITS BRIEF OF RESPONDENT

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SUMMARY OF ARGUMENT

Although the trial court multiplied the points for legal constraint, the error was harmless because the defendant was sentenced at the lowest end of the appropriate recommended guidelines range.

ARGUMENT

ALTHOUGH IT WAS IMPROPER TO MULTIPLY  
THE LEGAL CONSTRAINT POINTS, ANY  
ERROR WAS HARMLESS.

This court has held the multiplication of legal constraint points to be improper. *Flowers v. State*, 16 F.L.W. S637 (Fla. October 3, 1991). The multiplication of the legal constraint points in this case was harmless error because it is clear beyond a reasonable doubt that it did not adversely affect the defendant. *Cf. State v. DiGuilio*, 491 So.2d 1129 (Fla. 1986). The harmless error test is appropriately applied to sentencing errors. *See, e.g., Young v. State*, 579 So.2d 721, 724 (Fla. 1991); *Holton v. State*, 573 So.2d 285, 293 (Fla. 1991); *Downs v. State*, 572 So.2d 895, 901 (Fla. 1991).

The defendant scored 159 points when the legal constraint points were multiplied times two (R 27). The recommended guidelines range under category 4 was 2½ to 3½ years. However, he was sentenced to 24 months on community control (R 27; 30). When the improperly assessed 36 points are subtracted the total points equal 123. The recommended guidelines sentence for this score is community control or 12 to 30 months of incarceration. Fla.R.Crim.P. 3.988(d).

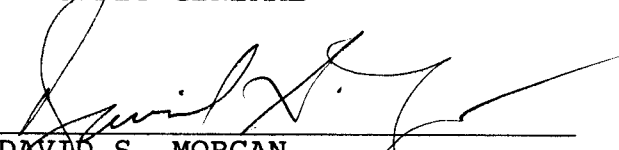
As the sentence imposed was the lowest allowable under the recommended range, it is clear that the defendant was not prejudiced in any respect. Therefore, there is no need to remand for resentencing.

CONCLUSION

There is no need to reverse because the error in sentencing was harmless.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to Kenneth Witts, Assistant Public Defender, 112-A Orange Ave., Daytona Beach, FL 32114, by interoffice delivery on this 16<sup>th</sup> day of December, 1991.



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