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74, 864

IN THE SUPREME COURT OF FLORIDA

GLENN S. READER,)
)
 Petitioner/Appellant,)
)
 versus)
)
 STATE OF FLORIDA,)
)
 Respondent.)
 _____)

S.C.T. CASE NO.

ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

MERIT BRIEF OF PETITIONER

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

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CASES CITED:

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OTHER AUTHORITIES:

Rule 3.701(d)(6), Florida Rules of Criminal Procedure

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STATEMENT OF THE CASE AND FACTS

Petitioner, Glenn Reader, was charged with burglary, grand theft of a firearm, trafficking in stolen property and possession of a firearm by a convicted felon (R52-54). In a second case, Petitioner was charged with trafficking in stolen property (R28). Pursuant to a plea agreement, Petitioner entered guilty pleas to armed burglary, the two trafficking charges and possession of a firearm by a convicted felon (R1-9, 35). The conditions of the plea agreement included a State recommendation of a guideline sentence (R35).

At sentencing, over defense objections, the court employed the legal constraint multiplier (R14). Petitioner's recommended sentence was five and one half to seven years imprisonment (R90). This was two guideline cells above what the recommendation would have been if legal constraint was scored only once. Petitioner was sentenced to five and one half years imprisonment followed by five years probation (R77-78).

Petitioner appealed his sentence to the Fifth District Court of Appeal. That court affirmed the sentence without opinion, but on a motion for rehearing, certified the following question:

DO FLORIDA'S UNIFORM SENTENCING GUIDELINES
REQUIRE THAT LEGAL CONSTRAINT POINTS BE
ASSESSED FOR EACH OFFENSE COMMITTED WHILE
UNDER LEGAL CONSTRAINT?

Reader v. State, 16 FLW D2525 (Fla. 5th.DCA September 26, 1991),

This Court withheld ruling on jurisdiction and requested a merit brief.

SUMMARY OF THE ARGUMENT

Petitioner argues that it was error for the lower court to score legal constraint points for each offense Petitioner was being sentenced on.

POINT

THE LOWER COURT ERRED BY
MULTIPLYING LEGAL CONSTRAINT POINTS
BY THE NUMBER OF OFFENSES FOR WHICH
PETITIONER WAS BEING SENTENCED.

The question presented by this case is whether legal constraint points are to be assessed for each offense committed while under legal constraint. This Court has recently answered this question in the negative, Flowers v. State, 16 FLW S637 (Fla. October 3, 1991).

The Florida Sentencing Guidelines Commission has also made it clear that it never intended to allow for multiple legal constraint points. Paragraphs eight through ten of the attached petition in this Court's case number 76,854 deal with the issue. The proposed Fla. R. Crim. P. 3.701(d)(6) included in the petition reads:

Legal constraint points are to be assessed where forms of legal constraint existed at the time of the commission of the offenses scored as primary or additional offenses at conviction. Legal status points are to be assessed only once whether there are one or more offenses at conviction.

The comment to this section reads:

The purpose of this revision is to clarify the original intent that legal constraint is a status consideration and is not to be considered a function of the number of offenses at conviction.

Petitioner asks this court to follow its own reasoning and the intent of the guidelines commission, vacate Petitioner's sentence and remand for resentencing.

CONCLUSION

BASED UPON the reasons expressed herein, Petitioner respectfully requests that this Honorable Court vacate Petitioner's sentence and remand for resentencing.

Respectfully submitted,

JAMES B. GIBSON
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SEVENTH JUDICIAL CIRCUIT

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon the Honorable Robert E. Butterworth, Attorney General, 210 N. Palmetto Avenue, Suite 447, Daytona Beach, Florida 32114, in his basket at the Fifth District Court of Appeal; and mailed to Glenn S. Reader, 1706 Atlantic Street, #3A, Melbourne Beach, Florida 32951, on this 25th day of November, 1991.

Kenneth Witts

KENNETH WITTS
ASSISTANT PUBLIC DEFENDER

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