

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

BRENDA DEMONIA, a/k/a)
BRENDA COOK,)
)
)
 Appellant,)
)
 v.)
)
 STATE OF FLORIDA,)
)
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 Appellee.)
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 _____)

Case No. 2D00-18

Opinion filed October 5, 2001.

Appeal from the Circuit Court for
Manatee County; Peter A. Dubensky, Judge.

James Marion Moorman, Public Defender,
Bartow, and Raymond Dix, Assistant Public
Defender, Bartow, for Appellant.

Robert A. Butterworth, Attorney General,
Tallahassee, and Ronald Napolitano,
Assistant Attorney General, Tampa, for
Appellee.

DAVIS, Judge.

Brenda DeMonia raises numerous challenges to her sentence, including a
challenge under Heggs v. State, 759 So. 2d 620 (Fla. 2000). While we find no merit in any

of DeMonia's arguments, we write to clarify our determination under Heggs.

DeMonia was convicted of numerous offenses arising out of her fraudulent theft of funds from her employer. Using a 1995 sentencing guidelines scoresheet, the trial court sentenced DeMonia for second-degree felony grand theft to an upward departure sentence of ten years' incarceration. The court offered two reasons for departure. The first reason is contained in section 921.0016(3)(n), Florida Statutes (1995), which allows the court to depart where the offense was committed by means of concealment, guile, or fraud to obtain money; the offense involved a high degree of sophistication; the defendant used position or status to facilitate commission of the offense; and the defendant had been involved in similar conduct in the past. Although the court offered, in addition to this valid reason, one invalid reason for departure, that erroneous reason does not invalidate the departure. See § 921.001(6), Fla. Stat. (Supp. 1994).

However, because the trial court sentenced DeMonia using the now-unconstitutional 1995 guidelines, we must consider whether Heggs requires us to remand for recalculation of DeMonia's scoresheet under the 1994 guidelines.¹ We conclude that we need not do so because, despite the court's use of a 1995 scoresheet, the court departed from the recommended sentence based on a departure reason that was valid not

¹ The information specified that DeMonia committed the grand theft between December 1, 1996, and September 30, 1998. The Heggs window encompasses all offenses committed between October 1, 1995, and May 24, 1997. Trapp v. State, 760 So. 2d 924 (Fla. 2000). The fact that a portion of DeMonia's continuing offense fell outside of the window period is not fatal to Heggs review, however, since the beginning date of the offense did fall within the applicable window period. See Hartman v. State, 773 So. 2d 1241 (Fla. 3d DCA 2000).

only under the 1995 guidelines, but under the 1994 guidelines as well. See § 921.0016(3)(n), Fla. Stat. (1993). Because the trial court could have imposed the upward departure sentence that it ultimately imposed based on a departure reason that was equally valid under the 1994 guidelines, DeMonia is not entitled to relief under Heggs, and we accordingly affirm. See Ray v. State, 772 So. 2d 18 (Fla. 2d DCA 2000), review denied, No. SC00-1814 (Fla. Jun. 21, 2001); Kwil v. State, 768 So. 2d 502 (Fla. 2d DCA 2000). However, because we recognize that this holding places us in conflict with the Fourth District Court of Appeal in Davis v. State, 26 Fla. L. Weekly D1694 (Fla. 4th DCA July 11, 2001), we certify conflict with Davis.

Affirmed; conflict certified.

BLUE, C.J., and THREADGILL, J., Concur.