

IN THE SECOND DISTRICT COURT OF APPEAL, LAKE LAND, FLORIDA

December 12, 2001

BRENDA DEMONIA, a/k/a	)	
BRENDA COOK,	)	
	)	
Appellant,	)	
	)	
v.	)	Case No. 2D00-18
	)	
STATE OF FLORIDA,	)	
	)	
Appellee.	)	
_____	)	

BY ORDER OF THE COURT:

**ORDER**

Upon consideration of appellant's motion for rehearing filed on October 19, 2001, it is

ORDERED that said motion is hereby granted and the prior opinion filed October 5, 2001, is withdrawn. The attached opinion is substituted therefor.

I HEREBY CERTIFY THE FOREGOING IS A TRUE COPY OF THE ORIGINAL COURT ORDER.

JAMES BIRK HOLD, CLERK

cc: Ronald Napolitano, Assistant Attorney General, Tampa  
Raymond Dix, Assistant Public Defender, Bartow  
Brenda DeMonia



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.	)	Case No. 2D00-18
	)	
STATE OF FLORIDA,	)	
	)	
Appellee.	)	
_____	)	

Opinion filed December 12, 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). We remand for recalculation of DeMonia's departure sentence.

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(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.<sup>1</sup> Pursuant to Hope v. State, 26 Fla. L. Weekly S651 (Fla. Oct. 4, 2001), we remand for recalculation of DeMonia's departure sentence.

Remanded for recalculation.

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

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<sup>1</sup> 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).