IN THE SUPREME COURT OF FLORIDA

RICKY WALTER SPURLOCK,

Petitioner,

vs. CASE NO. 65,450

STATE OF FLORIDA,

Respondent.
_____/

AMICUS CURIAE BRIEF

By: ENOCH J. WHITNEY
General Counsel
Florida Parole and Probation
Commission
1309 Winewood Blvd., Bldg. 6
Tallahassee, Florida 32304
(904) 488-4460

TABLE OF CONTENTS

CITATIONS OF AUTHORITY

PRELIMINARY STATEMENT

Amicus Curiae, Florida Parole and Probation Commission, will be referred to herein as "amicus curiae" or "Commission".

ISSUE

WHEN A YOUTHFUL OFFENDER HAS BEEN SENTENCED PURSUANT TO §958.05(2), FLA. STAT. (1979), DOES THE CIRCUIT COURT HAVE JURISDICTION TO ENTER SANCTIONS AGAINST THE YOUTHFUL OFFENDER FOR VIOLATING THE TERMS OF HIS COMMUNITY CONTROL PROGRAM, OR DOES JURISDICTION LIE EXCLUSIVELY IN THE PAROLE AND PROBATION COMMISSION?

ARGUMENT

I. CONFLICT AMONG THE DISTRICT COURTS OF APPEAL AS TO RESOLUTION OF THE QUESTION PRESENTED

The conflict among the District Courts of Appeal as to whether jurisdiction is vested in the Circuit Courts of this State or in the Commission to enter sanctions against a youthful offender who violates the terms of his community control began with the decision of the Fourth District Court of Appeal in Clem v. State, 8 F.L.W. 2135 (opinion filed August 31, 1983). In that decision, the Fourth District held that only the Commission had jurisdiction to enter sanctions against a youthful offender in a situation where he violates the terms of his community control program.

Subsequent to the filing of the Fourth District's August 31, 1983 decision, the State of Florida petitioned for rehearing on or about September 15, 1983. The District Court joined the Commission as a party appellee by order dated October 3, 1983. Special oral argument on the merits

was held June 19, 1984. As a result of the Court's rehearing Clem v. State, on August 29, 1984, the Fourth District filed an opinion to be substituted for the August 31, 1983, opinion. 9 F.L.W. 1868 The Court found its earlier opinion to be in error; accordingly, under the dictates of Clem on rehearing granted, the Circuit Courts now have jurisdiction to enter sanctions against a youthful offender who violates the terms of his community control.

The Second District Court of Appeal, in Lollis v. State, 449 So.2d 430 (Fla. 2d D.C.A. 1984), accepted the rationale of the earlier Clem opinion and found that only the Commission had authority to return youthful offenders to prison for violating the terms of their release agreements. The Second District certified the question presented here; however, the question was dismissed because notice invoking the Supreme Court of Florida's jurisdiction was untimely filed. Recently, however, the Second District has decided two cases in which it departed from its earlier decision in Lollis v. State, supra, and held that after a youthful offender has been sentenced under the Youthful Offender Act, the Circuit Court has jurisdiction to impose sanctions against him for violating the terms of his community control program. See, Crosby v. State, Case No. 84-1110 [January

25, 1985, 10 FLW 242]. Loveless v. Bryson, Case No. 84-1362 [December 7, 1984, 9 FLW 2254].

The Fifth District Court of Appeal in the case at bar has rejected the earlier Clem rationale, and thus agrees with the August 29, 1984 final decision in Clem, finding jurisdiction vests in the Circuit Courts. Spurlock v. State, 449 So.2d 973 (Fla. 5th D.C.A. 1984), See, also, Bradley v. State, Case No. 84-493 (Fla. 5th DCA December 6, 1984), [9 FLW 2536].

Thus, the Second, Fourth and Fifth Districts have found that Circuit Courts in this State are vested with jurisdiction to enter sanctions against a youthful offender who violates the terms of his community control or probation supervision. The Second District had previously found that the jurisdiction lies exclusively with the Commission. To date, the First and Third District Courts of Appeal and this Court have not ruled on the question presented herein.

II. THE FOURTH DISTRICT COURT OF APPEAL'S RATIONALE IN CLEM V. STATE

In analyzing Chapter 958, Fla. Stat. (1979) to determine whether the circuit court or the Commission has jurisdiction to revoke a youthful offender's probation, the Clem Court looked specifically at §§958.10, 958.05(2), and 958.14, Fla. Stat. (1979). Those sections provided, in full, as follows:

> 958.10 Community control program; maximum term.-
> (1) A youthful offender, when placed in a community control program upon release from imprisonment by parole or by accumulation of statutory gain-time allowances, shall be supervised in the program for a period not to exceed either 2 years or the balance of the maximum term to which he was sentenced, whichever is less; and the release shall be under such conditions as may be set by written order of the Parole and Probation Commission.
> (2) During the period spent in the community control program, the youthful offender shall perform the terms and conditions of his release agreement and shall be subject to revocation or modification of the release agreement as if he were on parole. The provisions of s. 945.30 shall apply to youthful offenders released on parole or by accumulation of statutory gain-time allowances, except those youthful offenders within or without the state under an interstate compact adopted pursuant to chapter 949.
> (3) The department shall develop policies which will provide for enhanced supervision programs for youthful offenders who have violated the

technical terms of their release agreements where such violations do not constitute misdemeanors or felonies. The policies shall stress alternatives other than revocation and confinement in prison and may include community residential or community nonresidential activities.

(emphasis supplied)

958.05 Judicial disposition of youthful offenders.-If the court classifies a person a youthful offender, in lieu of other criminal penalties authorized by law, the court shall dispose of the criminal case as follows:

* * *

(2) The court may commit the youthful offender to the custody of the department for a period not to exceed 6 years. The sentence of the court shall specify a period of not more than the first 4 years to be served by imprisonment and a period of not more than 2 years to be served in a community control program. The defendant shall serve the sentence of the court unless sooner released as provided by law.

958.14 Violation of community control program.-A violation or alleged violation of the terms of a community control program shall subject the youthful offender to the provisions of ss. 948.06(1), 949.10, 949.11, and 949.12.[1]

---

[1] Section 948.06(1), Fla. Stat. (1979) provided that the circuit court had jurisdiction to revoke probation, where a violation of the terms occurred, and to impose any sentence which it might have originally imposed before

(Footnote Continued)

The Fourth District Court of Appeal stated:

> While we recognize that section 958.10 appears to create a conflict regarding who is in charge of the youthful offender while he is in community control and who may proceed against him in the event he violates the terms of the community control, we believe the jurisdiction of the sentencing circuit court is established by sections 958.05(2) and 958.14.

Clem at 9 F.L.W. 1869.

(Footnote Continued)
placing the probationer on probation. Chapter 83-131, Section 20, Laws of Florida, amended Section 948.06(1) to encompass community control violations in addition to probation violations, effective October 1, 1983.

III. POSITION OF AMICUS CURIAE

The Florida Parole and Probation Commission, as amicus curiae in the instant proceeding, agrees with the holding of the Fourth District Court of Appeal that jurisdiction is vested in the Circuit Court to revoke the community control status of a youthful offender who violates the terms thereof. The Commission would, however, like to further develop the plain meaning of the sections of Chapter 958 at issue here.

It is so well settled in the decisional law of this state as to require no citation that statutes must be given their plain and obvious meanings by courts seeking to interpret them. In the instant case, amicus contends that §958.10, Fla. Stat. (1979) refers to parole merely in recognition that a youthful offender may be released from incarceration by one of two methods. The youthful offender may be paroled, pursuant to chapter 947, Fla. Stat., or he may be released by virtue of accumulation of statutory gain-time allowances.

Should a youthful offender be released from incarceration via parole, then the Commission would have jurisdiction to revoke his parole, pursuant to §§947.21, 947.22, and 947.23, Fla. Stat. Amicus asserts that the language in

§958.10(2), Fla. Stat., which states a youthful offender's release agreement shall be subject to revocation "as if he were on parole" is a comparative phrase only. In other words, just as a parolee is subject to having his parole revoked if the Commission determines he has violated the terms and conditions thereof, so too, is a youthful offender subject to having his release agreement revoked if he violates its conditions.

Amicus strongly asserts that §§958.05(2), 958.14, and 948.06(1), when read in pari materia, make it crystal clear that it is the sentencing Circuit Court which first classifies a person as a youthful offender, imposes a sentence which may include designating community control, and has jurisdiction to deal with violations thereof.

Amicus curiae's support for this contention is two-fold. First, the Commission has nothing whatsoever to do with the sentence imposed on any offender, but rather deals only with parole matters. The Court has stated that parole is not an act of amnesty nor does it terminate a sentence legally imposed by a sentencing court. "Parole is that procedure by which a prisoner who must in any event be returned to society at some time in the future is allowed to serve the last portion of his sentence outside prison walls and under strict supervision, as preparation for his

eventual return to society." Sellers v. Bridges, 15 So.2d 293, 294 (Fla. 1943) Sentencing an offender is quite clearly the function solely of the court system. Any violations of that sentence must, therefore, be disposed of by the Court. Nowhere within the parameters of Chapter 958 is there found authority for the Commission to deal with an offender who has violated the terms of his community control agreement, imposed originally as part of an offender's sentence.

Secondly, the Florida Parole and Probation Commission is an agency created by statute. §§947.001, et. seq., Fla. Stat. As such, the Commission cannot move beyond the bounds of its legislatively delegated authority. See, Dept. of Environmental Regulation v. Falls Chase Special Taxing District, 424 So.2d 787 (Fla. 1st D.C.A. 1983); Florida Dept. of Law Enforcement v. Hinson, 429 So.2d 723 (Fla. 1st D.C.A. 1983). A common sense reading of Chapter 947, Fla. Stat. reveals no legislatively delegated authority, express or implied, to deal with youthful offenders, except that they may be paroled. In Chapter 947, the Legislature indicated, "It is the intent of this act to establish an objective means for determining and establishing parole dates for inmates". §947.002(1), Fla. Stat. Amicus contends that the Commission would be acting outside the

limits of its legislatively delegated authority were it to attempt to exercise jurisdiction over youthful offenders.

CONCLUSION

Inasmuch as the Florida Parole and Probation Commission has legislative authority to deal only with parole matters pursuant to Chapter 947, Fla. Stat., amicus curiae submits that this Court should find the Circuit Court has jurisdiction to deal with youthful offenders who violate the terms of their community control sentence imposed under Section 958.05, Fla. Stat.

Respectfully submitted,

ENOCH J. WHITNEY
General Counsel
Florida Parole and Probation Commission
1309 Winewood Blvd., Bldg. 6,
Tallahassee, Florida 32301
(904) 488-4460

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to Michael S. Becker, Assistant Public Defender, 1012 South Ridgewood Avenue, Daytona Beach, Florida 32014-6183 and to Belle B. Turner, Assistant Attorney General, 125 North Ridgewood Avenue, Fourth Floor, Daytona Beach, Florida 32014 by U.S. mail this 6th day of February, 1985.

Enoch J. Whitney

ENOCH J. WHITNEY
General Counsel
Florida Parole and Probation
Commission