

IN THE SUPREME COURT OF FLORIDA

FILED

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CLERK, SUPREME COURT

By _____
Chief/Deputy Clerk

RICKY WALTER SPURLOCK,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

CASE NO. 65,450

RESPONDENT'S BRIEF ON MERITS

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TABLE OF CONTENTS

	<u>PAGE</u>
AUTHORITIES CITED	ii
ISSUE:	
WHEN A TRIAL COURT SENTENCES A PERSON AS A YOUTHFUL OFFENDER PURSUANT TO SECTION 958.05(2), FLORIDA STATUTES (1983), DOES THE CIRCUIT COURT HAVE JURIS- DICTION TO IMPOSE SANCTIONS FOR SUBSEQUENT VIOLATIONS OF HIS COMMUNITY CONTROL PROGRAM OR DOES JURISDICTION LIE EXCLU- SIVELY WITH THE PAROLE AND PROBATION COMMISSION?	1
ARGUMENT	1-6
CONCLUSION	7
CERTIFICATE OF SERVICE	7

AUTHORITIES CITED

CASES PAGE

Clem v. State,
8 FLW 2135 (Fla. 4th DCA August 31, 1983) 2

Kiesel v. Graham,
388 So.2d 594, 596 (Fla. 1st DCA 1980) 6

Lollis v. State,
449 So.2d 430 (Fla. 2d DCA 1984) 2

Nairn v. State,
417 So.2d 1092 (Fla. 3d DCA 1982) 5

Orlando Sports Stadium Inc. v.
St. ex rel. Powell,
262 So.2d 881 (Fla. 1972) 5

State v. Hialeah,
109 So.2d 368 (Fla. 1959) 5

Waugh v. State,
406 So.2d 1238 (Fla. 2d DCA 1981) 5

OTHER AUTHORITIES

Ch. 78-84, Section 2, Laws of Fla. (1978) 4
Ch. 83-216, §193, Laws of Fla. (1983) 6

Section 948.06(1), Fla. Stat. (1983) 1,4
Section 958.05(2), Fla. Stat. 1,2,3,6
Section 958.10, Fla. Stat. (1979) 1,3
Section 958.14, Fla. Stat. (1979) 1-5

ISSUE

WHEN A TRIAL COURT SENTENCES
A PERSON AS A YOUTHFUL OFFENDER
PURSUANT TO SECTION 958.05(2),
FLORIDA STATUTES (1983), DOES
THE CIRCUIT COURT HAVE JURIS-
DICTION TO IMPOSE SANCTIONS FOR
SUBSEQUENT VIOLATIONS OF HIS
COMMUNITY CONTROL PROGRAM OR
DOES JURISDICTION LIE EXCLU-
SIVELY WITH THE PAROLE AND
PROBATION COMMISSION?

ARGUMENT

This appeal presents only one issue for this Honorable Court to determine, namely, resolution of the conflict in Sections 958.10 and 958.14, Florida Statutes, (1979).¹ Once a youthful offender is sentenced to incarceration followed by community control pursuant to Section 958.05(2), after release, does the Probation and Parole Commission control the offender, or does the circuit court retain jurisdiction of the offender? Section 958.10 refers to the release as "parole", and subjects the offender to the supervision and control of the Probation and Parole Commission. However, in direct conflict, Section 958.14 states that violation of a community control program "shall subject the youthful offender to the provisions of Sections 948.06(1)", which grants jurisdiction of violation of probation or community control to the sentencing circuit court.

Faced with resolution of this conflict, the Fourth District Court of Appeal first sided with the Probation and

¹Sections 958.05 and 958.10, Florida Statutes (1983), are identical to the 1979 sections. Section 958.14, Florida Statutes (1979) was amended in 1983 to remove obsolete cross references.

Parole Commission, then completely reversed itself. Clem v. State, 8 FLW 2135 (Fla. 4th DCA August 31, 1983), on Motion for Rehearing granted, 9 FLW 1868 (Fla. 4th DCA August 29, 1984). This Honorable Court granted jurisdiction based upon a conflict with the first Clem decision. However, as Appellant notes in his initial brief on the merits, the instant case directly conflicts with Lollis v. State, 449 So.2d 430 (Fla. 2d DCA 1984). The Second District expressly adopted Clem I, finding that:

"Section 958.14, which subjects a youthful offender to probation revocation proceedings, does not apply to youthful offenders serving in a community control program begun pursuant to Section 958.10 after a period of imprisonment. . . We further hold that only the Probation and Parole Commission have authority to return Lollis to prison . . .

Id. at 432.

The opposing viewpoint is cogently expressed by the Fourth District in Clem II, and warrants recitation at length:

The jurisdiction issue arises from Section 958.10, Florida Statutes (1979), and its apparent conflict with Section 958.05(2) and 958.14. Pursuant to Section 958.05(2) the circuit court has jurisdiction to impose a maximum sentence upon a youthful offender of not more than six years, not more than four of which are to be served in prison and not more than two years in community control. If the youthful offender violates the terms of his community control, the circuit court has jurisdiction to proceed pursuant to Section

958.14, which incorporates Section 948.06(1), to revoke the community control and pronounce sentence upon him. By authority of Section 958.05(2) the circuit court initially ordered each Appellant to incarceration and then a period of probation (which we held was meant to be community control). When they violated the terms of the probation/community control, the court had jurisdiction to sentence them pursuant to Section 958.14. 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.

Respondent respectfully submits that the interpretation applied by the Fifth and Fourth Districts is preferable to the Second District's view, because the legislative purpose of the youthful offender act is effectuated and rules of statutory construction adhered to when §958.14 is given full force and effect. The trial court should determine the disposition of youthful offenders who violate community control as well as all other violations by probationers and participants in the community control program.

The youthful offender act was intended by the legislature as an alternative means of disposition for a certain class of criminal offenders. In enacting the act in 1978, the legislature declared its intent to be as follows:

"The purpose of this act is to improve the chances of correction and successful return to the community of youthful offenders sentenced imprisonment by preventing their association with older and more experienced criminals in the terms of their confinement. It is the further intent of the legislature to provide an additional sentencing alternative to be used in the discretion of the court when dealing with offenders who have demonstrated that they can no longer be handled safely as juveniles and who require more substantial limitations upon their liberty to ensure the protection of society."

Ch. 78-84, §2, Laws of Fla. (1978) (emphasis added).

Given this statement of legislative intent, the factors underlying operation of the Youthful Offender Act are clear. By virtue of their youth and inexperience, the legislature determined that the interest of society would best be served by allowing youthful offenders to be sentenced pursuant to a different set of rules than apply to adult offenders. Necessarily, a certain amount of discretion is vested in the sentencing court with regard to the eventual disposition of such offenders.

One facet of this discretion is that afforded the circuit court by Section 958.14, Florida Statutes (1983). That section provides upon violation of terms of community control program, the youthful offender shall be subject to revocation pursuant to Section 948.06(1), Florida Statutes (1983).

By its plain terms, §958.14 vested jurisdiction and discretion in the circuit court to deal with the alleged violations of the terms of the sentence which it imposed.

The act was intended by the legislature as a specific statutory scheme designed to deal with a particular class of offenders. Where the act is applicable, it is to be applied to the exclusion of adult sentencing statutes and concepts. See Nairn v. State, 417 So.2d 1092 (Fla. 3rd DCA 1982); Wagh v. State, 406 So.2d 1238 (Fla. 2d DCA 1981). A portion of that specialized scheme vests jurisdiction and discretion in the trial court which originally opted for youthful offender sentencing to deal with alleged violations of terms of such sentence. §958.14, Fla. Stat. (1983). It is fundamental that specialized statutory schemes should be construed in light of the evil to be remedied and the remedy conceived by the legislature to cure that evil. See Orlando Sports Stadium Inc. v. State ex rel. Powell, 262 So.2d 881 (Fla. 1972). Therefore, the legislative intent would be effectuated by permitting the trial court to exercise its sound discretion in dealing with youthful offenders.

Furthermore, basic rules of statutory construction indicate that §958.14 is controlling.

(T)he last expression of legislative will is the law, and, therefore, the last in point of time or order of arrangement prevails. This rule is applicable where the conflicting provisions appear in different statutes, (cite omitted) or in different provisions of the same statute. State v. Hialeah, 109 So.2d 368 (Fla. 1959).

Kiesel v. Graham, 388 So.2d 594, 596 (Fla. 1st DCA 1980).

(emphasis in original)

Section 958.14 is obviously last in order of arrangement, and therefore the last expression of legislative will. This conclusion is further supported by the fact that the legislature amended Section 958.14 in 1983, and if they intended to divest the circuit court of jurisdiction over youthful offenders who violate community control, it would have done so at that time. Ch. 83-216, § 193, Laws of Fla. (1983).

The legislative intent of the Youthful Offender Act to give sentencing judges alternatives indicates an intention to allow them to exercise that discretion, both when initially affording youthful offender status, as well as any violation of community control. Statutory construction rules require effectuating the last expression of legislative will, and Section 958.14 is last in arrangement and last in amendment. Therefore, the circuit court should have jurisdiction over youthful offenders who violate community control imposed pursuant to Section 958.05(2).

CONCLUSION

Based upon the arguments and authorities presented herein, Respondent respectfully prays this Honorable Court adopt the decision of the District Court of Appeal of the State of Florida, Fifth District.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Respondent's Brief on the Merits has been furnished by mail to: Michael S. Becker, Assistant Public Defender, 1012 S. Ridgewood Avenue, Daytona Beach, Florida 32014-6183, on this 3rd day of December, 1984

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