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IN THE SUPREME COURT OF FLORIDA

RICKY WALTER SPURLOCK, )  
 )  
 Defendant/Petitioner, )  
 )  
 vs. ) S.Ct. Case No. \_\_\_\_\_  
 ) DCA Case No. 83-1049  
 STATE OF FLORIDA, )  
 )  
 Plaintiff/Respondent. )  
 \_\_\_\_\_ )

PETITIONER'S BRIEF ON JURISDICTION  
STATEMENT OF THE CASE AND FACTS

Petitioner pled guilty to the charge of burglary and was adjudged guilty thereof. (R 13) The Honorable Richard O. Watson, Circuit Judge, adjudged Petitioner to be a youthful offender pursuant to Chapter 958, Florida Statutes (1979), and committed him to the Department of Corrections for five (5) years under a split sentence of two (2) years in prison followed by three (3) years probation. (R 13-14) Petitioner was released on parole on October 5, 1982. (R 18) On March 22, 1983, an affidavit of violation of probation was filed and on June 20, 1983, after a hearing, Judge Watson revoked Petitioner's probation. (R 19, 24) On July 5, 1983, Petitioner was sentenced to state prison for a period of five (5) years. (R 25-28)

On appeal, Petitioner argued that the trial court was without authority to revoke his probation, relying on the decision of the Fourth District Court of Appeal in Clem v. State, \_\_\_ So.2d \_\_\_, 1983 F.L.W. 2135 (Fla. 4th DCA Case No. 81-2243, Opinion rendered 8/31/83). In rejecting this argument, in

Spurlock v. State, \_\_\_ So.2d \_\_\_, 1984 F.L.W. 1075 (Fla. 5th DCA 83-1049, Opinion rendered 5/10/84), the Fifth District Court of Appeal specifically rejected the rationale and holding of Clem, supra.

ARGUMENT

THIS HONORABLE COURT HAS JURISDICTION  
PURSUANT TO ARTICLE V, SECTION 3(b)(3)  
OF THE FLORIDA CONSTITUTION.

In its decision in the instant case, the Fifth District Court of Appeal specifically rejected the holding of the Fourth District Court of Appeal in Clem v. State, \_\_\_ So.2d \_\_\_, 1983 F.L.W. 2135 (Fla. 4th DCA Case No. 81-2243, Opinion rendered 8/31/83) which holds that a youthful offender sentenced to imprisonment and probation is on parole following his release from incarceration and therefore, not subject to the trial court's jurisdiction. In so ruling, the Court in Clem, supra, certified the following question to be of great public importance:

When a youthful offender has been sentenced pursuant to Section 958.05(2), Florida Statutes (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 over the violation lie exclusively in the Parole and Probation Commission?

1983 F.L.W. at 2136.<sup>1/</sup>

Very recently, in Lollis v. State, \_\_\_ So.2d \_\_\_, 1984 F.L.W. 1093 (Fla. 2d DCA, Opinion rendered 5/9/84) the Second District Court of Appeal agreed with Clem v. State, supra and certified the same question for resolution by this Court.

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<sup>1/</sup> As of the filing of this brief, rehearing is still pending in the Fourth District and thus, this Court has not yet accepted jurisdiction in Clem, supra.

Inasmuch as the opinion of the Fifth District Court sub  
judice specifically recognized and rejects the decision of the  
Fourth District in Clem, supra, conflict exists so as to bring  
the instant case within the purview of Fla.R.App.P. 9.030 and its  
requirement of express and direct conflict. Thus, this Court  
should exercise its power and grant discretionary review of the  
instant case.

CONCLUSION

The decision of the Fifth District Court of Appeal sub  
judice expressly and directly conflicts with the opinion of the  
Fourth District Court of Appeal in Clem v. State, supra, thereby  
conferring jurisdiction on this Honorable Court pursuant to  
Article V, Section 3(b)(3) of the Florida Constitution and  
Fla.R.App.P. 9.030.

This case involves principles of law, the settlement of  
which is of great importance to the public, as distinguished from  
that of the parties alone.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the  
foregoing has been mailed to the Honorable Jim Smith, Attorney  
General, 125 N. Ridgewood Avenue, Fourth Floor, Daytona Beach,  
Florida 32014 and Mr. Ricky Walter Spurlock, Inmate No. 078977,  
Lake C. I., Post Office Box 99, Clermont, Florida 32711 this  
19<sup>th</sup> day of June, 1984.

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