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IN THE SUPREME COURT OF FLORIDA

RICKY WALTER SPURLOCK, Petitioner,	)	
vs.	)	Case No. 65,450
STATE OF FLORIDA, Respondent.	)	

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BRIEF OF PETITIONER ON THE MERITS

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PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

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STATEMENT OF THE CASE AND FACTS

Petitioner , RICKY WALTER SPURLOCK, 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 jurisdiction to revoke his probation, relying on the decision of the Fourth District Court of Appeal in Clem v. State,

8 FLW 2135 (Fla. 4th DCA, 8/31/83)[1/]. In rejecting this argument, the Fifth District Court of Appeal, in the instant case, held that the trial court properly had jurisdiction. Spurlock v. State, 449 So.2d 973 (Fla. 5th DCA 1984).

By order issued October 24, 1984, this Court accepted for discretionary review the decision of the Fifth District in the instant case.

1/ On August 29, 1984, the Fourth District Court of Appeal issued its opinion on rehearing in Clem, supra, wherein the Court reversed itself and held that the trial court has jurisdiction to revoke a youthful offender's community control. No reasons for this complete turnaround in decisions is apparent from its decision. Clem v. State, 9 FLW 1868 (Fla. 4th DCA 8/29/84). Notwithstanding this change, conflict still exists between the instant case and Lollis v. State, 449 So.2d 430 (Fla. 2d DCA 1984) wherein the Court specifically adopted the earlier Clem decision.

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 JURISDICTION TO IMPOSE SANCTIONS FOR SUBSEQUENT VIOLATIONS OF HIS COMMUNITY CONTROL PROGRAM OR DOES JURISDICTION OVER SUCH VIOLATIONS LIE EXCLUSIVELY WITH THE PAROLE AND PROBATION COMMISSION?

ARGUMENT

Chapter 958, Florida Statutes (1983) is called the Youthful Offender Act and was enacted to provide an alternative sentencing option for those individuals under 23 years of age and who have had minimal contact with the criminal justice system, but can no longer be treated as juveniles. Section 958.021, Florida Statutes (1983). Once a court determines that a person qualifies for youthful offender status, two options are available depending mainly on whether the court feels that any actual confinement is required. In the event a court is satisfied that no incarceration is necessary, pursuant to Section 958.05(1), Florida Statutes (1983):

> (1) The court may place the youthful offender on probation in a community control program, with or without an adjudication of guilt, for a period not to exceed 2 years or extend beyond the 23rd birthday of the defendant.

If, however, the court is of the opinion that somewhat stronger punishment is warranted, pursuant to Section 958.05(2), Florida Statutes (1983):

> (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.

Sentencing in the instant case was imposed pursuant to Section 958.05(2), Florida Statutes (1979)[2/]. Petitioner contends that once sentence is imposed pursuant to Section 958.05(2), Florida Statutes (1983), the trial court is forever divested of jurisdiction over the offender and that any subsequent violations of community control can only be handled through the Parole and Probation Commission.

As set forth above, the Youthful Offender Act provides for two (2) separate means of "community control". Section 958.05(1), Florida Statutes (1983) provides for a community control program in lieu of commitment to the custody of the Department of Corrections. This form is akin to probation and the trial court retains jurisdiction to dispose of subsequent violations by the offender. Section 958.05(2), Florida Statutes (1983) provides for a different community control for youthful offenders subsequent to release from incarceration. This form is akin to parole and thus any subsequent violations of the terms or conditions of this community control are to be considered as parole violations handled exclusively by the Parole and Probation Commission. The plain language of the statute supports this

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[2/] Section 958.05(2), Florida Statutes (1979), remains identical in form and substance to the current Section 958.05(2), Florida Statutes (1983).

interpretation wherein it is provided that the court can "commit the youthful offender to the custody of the department [of Corrections] 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." Section 958.05(2), Florida Statutes (1983) (emphasis added). This Court has specifically stated that probation is not a sentence. Villery v. Parole and Probation Commission, 396 So.2d 1107 (Fla. 1980). Thus it follows that since the community control provided for in Section 958.05(2), Florida Statutes (1983) refers to it as part of the "sentence" of the court, it is not to be considered probation, but rather a form of parole.

Section 958.10(1), Florida Statutes (1983) expressly provides for the situation where a youthful offender (like Petitioner) is committed to prison then released on the youthful offender community control program subsequent to said commitment. That such community control is to be considered as parole is explicitly set forth in Section 958.10(2), Florida Statutes (1983) which provides:

> (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 §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.

(emphasis added). It appears from this section that the legislature intended the community control provided for in Section 958.05(2), Florida Statutes (1983) to be considered as parole and to thus give the Parole and Probation Commission exclusive jurisdiction to handle all subsequent violations of the community control program.

In summary, then, it appears that the Youthful Offender Act contemplates two forms of community control. The first is equated to probation and allows the trial court to retain jurisdiction over the person with regards to any subsequent violations of the terms of the programs. The second form of community control, and the one which Petitioner was serving, is considered part of the total "sentence" imposed and thus is considered as "parole". Accordingly, upon imposition of sentence under Section 958.05(2), Florida Statutes (1983), the trial court is divested of jurisdiction. All subsequent violations of the terms and conditions of this form of community control are to be handled exclusively by the Parole and Probation Commission. Petitioner, therefore, urges this Honorable Court to reverse the decision of the Fifth District Court of Appeal sub judice.

CONCLUSION

Based on the reasons and authorities cited herein, Petitioner respectfully requests this Honorable Court to reverse the decision of the Fifth District Court of Appeal.

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 to Mr. Ricky Walter Spurlock, 356 Varella, St. Augustine, Florida 32084 this 13th day of November, 1984.

Michael S. Becker
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