

IN THE FLORIDA SUPREME COURT

FILED

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JUL 24 1984

CLERK, SUPREME COURT

By [Signature]
Chief Deputy Clerk

STATE OF FLORIDA,

Petitioner/Cross-Respondent,

v.

CASE NO. 65,615

MARTIN K. SANDERSON,

Respondent/Cross-Petitioner.

ON DISCRETIONARY REVIEW FROM
THE FIRST DISTRICT COURT OF APPEAL

BRIEF OF RESPONDENT/CROSS-
PETITIONER ON JURISDICTION

MICHAEL E. ALLEN
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

P. DOUGLAS BRINKMEYER
ASSISTANT PUBLIC DEFENDER
POST OFFICE BOX 671
TALLAHASSEE, FLORIDA 32302
(904) 488-2458

ATTORNEY FOR RESPONDENT/CROSS-PETITIONER

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Petitioner/Cross-Respondent,	:	
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	:	
Respondent/Cross-Petitioner.	:	
_____	:	

BRIEF OF RESPONDENT/CROSS-PETITIONER ON JURISDICTION

I PRELIMINARY STATEMENT AND STATEMENT OF THE CASE AND FACTS

Respondent/Cross-Petitioner accepts the recitations at pages 1-3 of the state's brief, and would add the following facts which may be of interest to this Court: the opinion of the lower tribunal was prematurely reported as Sanderson v. State, 447 So.2d 374 (Fla. 1st DCA 1984) (Appendix A). Respondent/Cross-Petitioner moved for rehearing, for rehearing en banc, and for certification (Appendix B), which were denied without opinion on April 4, 1984 (Appendix C).

The mandate of the First District issued on June 27, 1984. To the undersigned's knowledge, no action was taken in the trial court on the mandate because respondent/cross-petitioner had been released from custody, after having served his entire sentence.

Petitioner's timely notice of discretionary review was filed on July 9, 1984. Respondent timely filed a cross notice of discretionary review on July 10, 1984, to preserve the issue presented as point 1 in petitioner's brief on jurisdiction.

II ARGUMENT

ISSUE I

THE FIRST DISTRICT'S OPINION IN THE INSTANT CASE IN EXPRESS AND DIRECT CONFLICT WITH DECISIONS OF THREE OTHER DISTRICT COURTS OF APPEAL ON THE QUESTION OF RIGHT TO COUNSEL AT A PROBATION REVOCATION HEARING.

Respondent/Cross-Petitioner is gratified to note that the state has urged this Court to take jurisdiction to resolve the conflict which the First District has created by its decision in the instant case. That decision which holds that there is no constitutional right to counsel in a probation revocation hearing, not only conflicts with those recent decisions of the Fourth District cited by the state, but it also conflicts with decisions emanating from two Florida District Courts of Appeal. See, e.g., Williams v. State, 446 So.2d 721 (Fla. 2d DCA 1984); Mullins v. State, 438 So.2d 908 (Fla. 2d DCA 1983); Smith v. State, 427 So.2d 773 (Fla. 2d DCA 1983); and Grandin v. State, 421 So.2d 803 (Fla. 3d DCA 1982).

This Court must accept this case for review to resolve this patent conflict. Unless quickly resolved by this Court, divergent results will be reached by trial and appellate courts throughout the state on the question of whether an indigent is entitled to appointed counsel at a probation revocation hearing. Although the question would appear to

be Moot as applied to respondent/cross-petitioner, it should not be treated as Moot, because it is obviously "capable of repetition, yet evading review". Roe v. Wade, 410 U.S. 147, 161 (1973).

ISSUE II

THE FIRST DISTRICT'S DECISION MAY BE IN EXPRESS AND DIRECT CONFLICT WITH JONES v. STATE, 449 So.2d 253 (FLA. 1984) ON THE QUESTION OF RIGHT TO COUNSEL AT SENTENCING.

In holding that respondent/cross-petitioner had a right to counsel at sentencing, following his counsel-less revocation of probation, the First District followed its prior decisions in Baranko v. State, 406 So.2d 1271 (Fla. 1st DCA 1981) and Billions v. State, 399 So.2d 1086 (Fla. 1st DCA 1981). The court also complied with this Court's mandate in Fla.R.Crim.P. 3.111(d)(5), which requires the trial court to renew the offer at any stage of the proceedings.

Since Jones did not overrule Baranko or Billions and did not discuss the effect of Rule 3.111(d)(5), the undersigned can only conclude that Jones is an aberration from existing law, or is a function of the type of opstrepous defendant which Jones was.

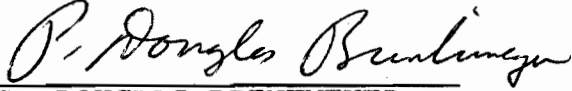
In any event, since both parties have urged this Court to grant review of Issue I, the undersigned cannot in good faith argue against extending review to Issue II as well.

III CONCLUSION

Based upon the foregoing argument, reasoning, and citation of authority, respondent/cross-petitioner urges this Court to accept discretionary review of this decision.

Respectfully submitted,

MICHAEL E. ALLEN
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT


P. DOUGLAS BRINKMEYER
Assistant Public Defender
Post Office Box 671
Tallahassee, Florida 32302
(904) 488-2458

ATTORNEY FOR RESPONDENT/CROSS-PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above Brief of Respondent/Cross-Petitioner on Jurisdiction has been furnished by hand delivery to Mr. Lawrence Kaden, The Capitol, Tallahassee, Florida 32301; and a copy mailed to Respondent/Cross-Petitioner, Martin K. Sanderson, 383 Marietta Street, Alpharetta, Georgia 30201 on this 24 day of July, 1984.


P. DOUGLAS BRINKMEYER