IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

vs.

MARTIN K. SANDERSON,

Respondent.

_____/

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CASE NO. 65,615

PETITIONER'S BRIEF ON JURISDICTION

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TABLE OF CITATIONS

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PETITIONER'S BRIEF ON JURISDICTION

PRELIMINARY STATEMENT

Martin K. Sanderson was the defendant in the Circuit Court of Nassau County, and the appellant in the District Court of Appeal, First District. The State of Florida was the prosecuting authority and the appellee, respectively. The parties will be referred to as they appear before this Court.

STATEMENT OF THE CASE AND FACTS

Respondent was adjudicated guilty in January, 1983, of the offense of burglary and placed on a period of probation of one year. In June of 1983, his probation was extended for an additional year after he had been charged with a violation. On July 25, 1983, Respondent was charged with another violation of probation, and he appeared before the trial court on August 18, 1983, at which time the case was rescheduled in order to allow Respondent to obtain an attorney. However, when Respondent's case was called on September 8, 1983, Respondent was without an attorney, and he indicated that he wished to represent himself. Respondent then executed a waiver of counsel which reveals that he had been advised of his right to be represented by an attorney, he had been advised that he could have a court appointed attorney, he was advised that the crime for which he had been charged could involve jail time, that no one had offered him any promises of favor or reward and that he had not been threatened, and that he understood the contents of the waiver, and that he had waived his right to an attorney. See Sanderson v. State, ___ So.2d ___, 9 F.L.W. 576 (Fla. 1st DCA 1984).

Respondent then pled guilty to violating his probation, and he presented evidence of mitigation in his behalf. Respondent presented a witness who stated that Respondent was his employee in Atlanta and that Respondent could continue working with him if he were allowed to remain on probation. Id. Respondent explained that the reason he had not notified his probation officer

before leaving the state was because the job was offered late on a Friday night and he did not have time to contact his probation officer. Respondent's probation was then revoked and he received a one year sentence.

On appeal to the First District Court of Appeal, Respondent now represented by the Office of the Public Defender, argued that his waiver of counsel at the probation revocation proceeding was insufficient. The State argued to the contrary. The First District disagreed with the State and held that the waiver of counsel was insufficient. Id. However, the court did not vacate the revocation of probation order because the court then found that Respondent was not entitled to court appointed counsel at his probation revocation hearing. The First District did vacate the sentence because the offer of counsel should have been renewed prior to sentencing. The sentencing occurred immediately after the probation had been revoked.

On rehearing, the State argued that it would be placing form over substance to require the trial court to renew an offer of sentencing immediately after probation had been revoked. The State relied upon this Court's opinion in a capital case, Jones v. State, 449 So.2d 253, 258 (Fla. 1984), in which the Court had stated that it would not "exalt form over substance" by requiring an offer of counsel to be renewed at the sentencing stage of a capital trial after the defendant had waived counsel during the guilt phase.

ARGUMENT

ISSUE I

THE FIRST DISTRICT'S OPINION IN SANDERSON V. STATE, ___ So.2d ___, 9 F.L.W. 575 (Fla. 1st DCA 1984), IS IN EXPRESS AND DIRECT CONFLICT WITH NUMEROUS OPINIONS FROM THE FOURTH DISTRICT WHICH HAVE HELD THAT AN INDIGENT PROBATIONER IS ENTITLED TO APPOINTED COUNSEL AT A PROBATION REVOCATION HEARING.

The First District held in Respondent's case that an indigent probationer is not constitutionally entitled to counsel at a probation revocation proceeding. The Fourth District has held to the contrary and has specifically noted that the Fourth District's line of cases is in express and direct conflict with Sanderson. See, e.g., Hooper v. State, ___ So.2d ___, 9 F.L.W. 1268 (Fla. 4th DCA 1984), in which the court acknowledged "that our decision herein is contrary to the decision in Sanderson v. State, ___ So.2d ___ (Fla. 1st DCA" 1984). See also Hicks v. State, ___ So.2d ___, 9 F.L.W. 1238 (Fla. 4th DCA 1984); Moore v. State, ___ So.2d ___, 9 F.L.W. 1304 (Fla. 4th DCA 1984); Olsen v. State, ___ So.2d ___, 9 F.L.W. 1375 (Fla. 4th DCA 1984); Thomas v. State, ___ So.2d ___, 9 F.L.W. 1275 (Fla. 4th DCA 1984); Battie v. State, ___ So.2d ___, 9 F.L.W. 1448 (Fla. 4th DCA 1984); Harden v. State, ___ So.2d ___, 9 F.L.W. 1448 (Fla. 4th DCA 1984); Williams v. State, ___ So.2d ___, 9 F.L.W. 1449 (Fla. 4th DCA 1984). Because the two courts are in conflict on the same issue of law, the State submits that the Court should grant certiorari to resolve the issue.

ISSUE II

THE FIRST DISTRICT'S OPINION EXPRESSLY AND DIRECTLY CONFLICTS WITH THIS COURT'S OPINION IN JONES V. STATE, 449 So.2d 253 (Fla. 1984).

In its answer brief filed in the First District, the State argued that it would be exalting form over substance to require an offer of counsel to be renewed at a probation sentencing proceeding when probation had been revoked just seconds before. Before the case became final, the State filed a motion for rehearing in which Jones v. State, supra, was cited for the proposition that if an offer of counsel did not have to be renewed in a capital case at sentencing, surely it did not have to be renewed in a probation revocation proceeding at sentencing when the sentencing occurred just seconds after probation had been revoked. In Jones, this Court explained that it would be exalting form over substance to require an offer of counsel to be renewed, and the State submits that that is precisely what the First District did when it held that an offer of counsel must be renewed during the same probation proceeding. Accordingly, the State submits that the two cases are in express and direct conflict and that the Court should grant certiorari to resolve the issue.

CONCLUSION

The State of Florida respectfully suggests that the Court should grant certiorari to resolve the conflict raised in this brief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand to P. Douglas Brinkmeyer, Assistant Public Defender, Post Office Box 671, Tallahassee, Florida, 32302, on this 19th day of July, 1984.

LAWRENCE A. KADEN

OF COUNSEL