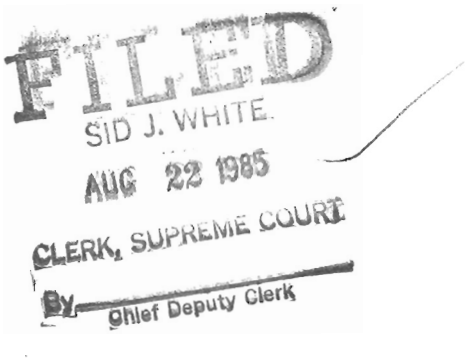
IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA, PETITIONER, VS. RAMON R. PINA, RESPONDENT.	)	CASE NO. 67,280



PETITIONER'S REPLY BRIEF ON THE MERITS

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OTHER AUTHORITY

PRELIMINARY STATEMENT

Petitioner relies on the preliminary statement contained in its initial brief.

STATEMENT OF THE CASE AND FACTS

Petitioner relies on the statement of the case and facts contained in its initial brief.

POINTS INVOLVED

I

WHETHER THE EXCLUSIONARY RULE OF THE FOURTH AMENDMENT, UNITED STATES CONSTITUTION, AND ARTICLE I, SECTION 12, OF THE FLORIDA CONSTITUTION, AS AMENDED, IS INAPPLICABLE TO A PROBATION REVOCATION PROCEEDING, AND WHETHER THE RESPONDENT'S CHALLENGE TO THE SEARCH AND SEIZURE IS PRECLUDED AS TO HIS VIOLATION OF PROBATION CASES?

II

WHETHER THE TRIAL COURT PROPERLY DENIED RESPONDENT'S MOTION TO SUPPRESS EVIDENCE BECAUSE RESPONDENT FREELY AND VOLUNTARILY CONSENTED TO A SEARCH OF HIS SUITCASES, AND THE COCAINE WAS SEIZED AS A RESULT OF THAT SEARCH?

III

WHETHER IF THIS COURT HOLDS THAT THE EXCLUSIONARY RULE IS INAPPLICABLE IN PROBATION REVOCATION PROCEEDINGS, THE HOLDING WOULD APPLY TO RESPONDENT, AND THE RULE COULD BE APPLIED RETROACTIVELY?

SUMMARY OF THE ARGUMENT

III. The announcement of a rule that the exclusionary rule does not apply in probation revocation proceedings would not affect a substantive right of Respondent or any other criminal defendant. Further, if an analysis of the effect of the retrospective application of the rule were made it would be seen that retrospective application to Respondent would be appropriate.

ARGUMENT

I

THE EXCLUSIONARY RULE OF THE FOURTH AMENDMENT, UNITED STATES CONSTITUTION, AND ARTICLE I, SECTION 12, OF THE FLORIDA CONSTITUTION, AS AMENDED, IS INAPPLICABLE TO A PROBATION REVOCATION PROCEEDING, AND THE RESPONDENT'S CHALLENGE TO THE SEARCH AND SEIZURE IS PRECLUDED AS TO HIS VIOLATION OF PROBATION CASES.

Petitioner relies on the argument on this issue contained in its initial brief.

II

THE TRIAL COURT PROPERLY DENIED RESPONDENT'S MOTION TO SUPPRESS EVIDENCE BECAUSE RESPONDENT FREELY AND VOLUNTARILY CONSENTED TO A SEARCH OF HIS SUITCASES, AND THE COCAINE WAS SEIZED AS A RESULT OF THAT SEARCH.

Petitioner relies on the argument on this issue contained in its initial brief.

III

IF THIS COURT HOLDS THAT THE EXCLUSIONARY RULE IS INAPPLICABLE IN PROBATION REVOCATION PROCEEDINGS, THE HOLDING WOULD APPLY TO RESPONDENT, AND THE RULE COULD BE APPLIED RETROACTIVELY.

Respondent argues that even if this Court were to announce a rule that the exclusionary rule would be inapplicable in probation revocation proceedings, it should not be applied to him. Petitioner maintains that not only should such a rule be adopted but that it should apply retroactively at least as far as to the time of the amendment to Article I, Section 12 of the Florida Constitution on January 4, 1983. The acts giving rise to the revocation of Respondent's probation took place on January 26, 1984. Further notice of the shift in the applicability of the exclusionary rule was given through this Court's opinion in State v. Lavazzoli, 434 So.2d 321 (Fla. 1983).

Petitioner would remind the Court that the purpose of the exclusionary rule is not to redress the injury to the privacy of the search victim, but is to deter future unlawful police conduct. United States v. Calandra, 414 U.S. 338, 347, 94 S.Ct. 613, 38 L.Ed.2d 561, 571 (1974). The "rule is a judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect, rather than a personal

constitutional right of the party aggrieved." Id., 414 U.S. at 348. See also United States v. Janis, 428 U.S. 433, 96 S.Ct. 3021, 49 L.Ed.2d 1046 (1976). Thus, a decision by this Court finding the exclusionary rule inapplicable in probation revocation proceedings does not involve a substantial right of a defendant. Thus, there is no need for a prospective versus retrospective application analysis.

Moreover, as a general rule, judicial decisions apply retroactively. Solem v. Stumes, ___U.S. ___, 104 S.Ct. ___, 79 L.Ed.2d 579, 586 (1984). Decisions need not be applied retroactively if the "interests of justice" or the "exigencies of the situation" mandate otherwise. Id., 79 L.Ed.2d at 587. The criteria to be considered are: a) the purpose to be served by the new standards, b) the extent of the reliance by law enforcement authorities of the old standards, and, c) the effect on the administration of justice of a retroactive application of the new standards. Complete retroactive effect is most appropriate when a new principle is designed to enhance the accuracy of criminal trials and the truth finding process. Id. Petitioner asserts that under this analysis, retrospective application of the ruling in the instant case would be totally proper. However, since no substantive right of Respondent is affected, retrospective application is automatic. Further,

the United States Supreme Court has held that when a new construction of the Fourth Amendment did not constitute a "clear break with the past", the ruling is to be applied to all convictions not yet final when the decision was handed down. United States v. Johnson, 457 U.S. 537, 102 S.Ct. 2579, 73 L.Ed.2d 202 (1982). Respondent's case would certainly fall into this category, if it were necessary to consider the prospective/retrospective question.

The principle that the exclusionary rule does not apply in probation revocation proceedings most definitely applies to Respondent.

CONCLUSION

THEREFORE, based upon the foregoing reasons and authorities cited herein, Petitioner respectfully requests that the judgments and sentences of the trial court be AFFIRMED and the decision of the Fourth District Court of Appeal to reverse and remand the case be QUASHED.

Respectfuly submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Reply Brief on the Merits has been furnished, by courier/mail, to THOMAS F. BALL, III, ESQUIRE, Assistant Public Defender, 224 Datura Street, 13th Floor, West Palm Beach, Florida 33401, this 20th day of August, 1985.

Joan Fowler Rossin

Of Counsel