

IN THE SUPREME COURT OF FLORIDA

FILED  
NOV 5 1968  
CLERK OF THE COURT  
By M  
Supty Clerk

W.C. REEVES, )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 STATE OF FLORIDA, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

CASE NO. 69,548

PETITIONER'S BRIEF ON JURISDICTION

JAMES B. GIBSON  
PUBLIC DEFENDER  
SEVENTH JUDICIAL CIRCUIT

CHRISTOPHER S. QUARLES  
ASSISTANT PUBLIC DEFENDER  
112 Orange Avenue, Suite A  
Daytona Beach, Florida 32014  
Phone: 904/252-3367

ATTORNEY FOR PETITIONER

TABLE OF CONTENTS

	<u>PAGE NO.</u>
TABLE OF CONTENTS	i
TABLE OF CITATIONS	ii
STATEMENT OF THE CASE AND FACTS	1
SUMMARY OF ARGUMENT	3
ISSUE	
WHETHER EXPRESS AND DIRECT CONFLICT EXISTS FOR THIS COURT TO REVIEW THE INSTANT CASE PURSUANT TO ARTICLE V, SECTION (3) (b) (3), FLORIDA CONSTITUTION.	4
CONCLUSION	5
CERTIFICATE OF SERVICE	5

TABLE OF CITATIONS

PAGE NO.

CASES CITED:

<u>Davis v. State,</u> 461 So.2d 1003 (Fla. 1st DCA 1984)	4
<u>Jollie v. State</u> 405 So.2d 418 (Fla. 1981)	4
<u>Louzon v. State</u> 460 So.2d 551 (Fla. 5th DCA 1984)	4
<u>Mestas v. State</u> 484 So.2d 612 (Fla. 2d DCA 1986)	3,4
<u>Michell v. State</u> 463 So.2d 416 (Fla. 1st DCA 1985)	4

OTHER AUTHORITIES:

Article V, Section (3)(b)(3), Florida Constitution	4
Section 790.01, Florida Statutes (1985)	1

IN THE SUPREME COURT OF FLORIDA

W.C. REEVES, )  
 )  
 Petitioner, )  
 )  
 vs. ) CASE NO.  
 )  
 STATE OF FLORIDA, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

PETITIONER'S BRIEF ON JURISDICTION

STATEMENT OF THE CASE AND FACTS

On July 25, 1985, the state filed an information charging the Appellant, W.C. Reeves, with the offense of carrying a concealed firearm in violation of Section 790.01, Florida Statutes (1985). (R13)

The arrest report indicates that Officer Clinger responded to a call where he encountered two black females who reported an attempted sexual assault by two black males, known to them only as Billy and James. One of these black males reportedly pointed a handgun at them during the incident. Officer Clinger stopped two black males matching the physical description of the perpetrators and, during a pat-down, found a .25 handgun in one's pocket. (R9-11)

The Appellant entered a plea of guilty to the crime charged pursuant to plea negotiations. (R26-28) The state

agreed to recommend a pre-sentence investigation and not to file charges involving possession of a firearm by a convicted felon.

The Appellant agreed to forfeit the firearm and not to own firearms as a condition of probation. Appellant also agreed to substance abuse counselling. (R26-27)

A sentencing guidelines scoresheet was prepared resulting in a recommended non-state prison sanction. (R30-31) The trial court adjudicated Appellant guilty and sentenced him to two years community control with an accompanying condition that he serve 51 weeks in the county jail. This sentence was suspended for a period of 90 days and the Appellant was given credit for 45 days previously served. (R1-7,30-36)

On September 25, 1986, the District Court of Appeal, Fifth District, held as follows:

PER CURIAM.

We affirm on the ground that community control is a non-state prison sanction within the meaning of that term in the sentencing guidelines. See Mitchell v. State, 463 So.2d 416 (Fla. 1st DCA 1985); Davis v. State, 461 So.2d 1003 (Fla. 1st DCA 1984); Louzon v. State, 460 So.2d 551 (Fla. 5th DCA 1984). Contra Mestas v. State, 484 So.2d 612 (Fla. 2d DCA 1986).

AFFIRMED.

(See Appendix attached hereto.)

A Notice to Invoke Discretionary Jurisdiction, based upon express and direct conflict was filed on October 24, 1986. This brief follows.

SUMMARY OF ARGUMENT

In affirming Petitioner's conviction, the Fifth District Court of Appeal concluded that community control is a non-state prison sanction. A contrary result on this issue was reached in Mestas v. State, 484 So.2d 612 (Fla. 2d DCA 1986), which is currently pending review by this Court.

ISSUE

WHETHER EXPRESS AND DIRECT CONFLICT  
EXISTS FOR THIS COURT TO REVIEW THE  
INSTANT CASE PURSUANT TO ARTICLE V,  
SECTION (3) (b) (3), FLORIDA CONSTITUTION.

The Fifth District Court of Appeal affirmed Petitioner's conviction on the authority of Mitchell v. State, 463 So.2d 416 (Fla. 1st DCA 1985); Davis v. State, 461 So.2d 1003 (Fla. 1st DCA 1984); Louzon v. State, 460 So.2d 551 (Fla. 5th DCA 1984). The opinion concluded that community control is a non-state prison sanction within the meaning of that term in the sentencing guidelines. See attached appendix. However, the District Court also recognized that Mestas v. State, 484 So.2d 612 (Fla. 2d DCA 1986) reached a contrary conclusion on this same issue. Mestas, supra, held that a sanction of community control was a departure from the recommended range of any non-state prison sanction. In so holding, the District Court of Appeal, Second District, certified conflict with Davis, supra, and Louzon, supra. Accordingly, this Court should exercise its jurisdiction in the above-styled cause.

Additionally, discretionary review of Mestas, supra, by this Court is presently pending, Supreme Court Case No. 68,489. A District Court of Appeal opinion which cites as controlling authority a decision that is pending review in the Supreme Court of Florida constitutes prima facie express conflict and allows the Court to exercise its jurisdiction. Jollie v. State, 405 So.2d 418, 420 (Fla. 1981).

CONCLUSION

Based upon the argument and authorities cited herein, this Court is requested to exercise the jurisdiction that clearly exists.

Respectfully submitted,

JAMES B. GIBSON  
PUBLIC DEFENDER  
SEVENTH JUDICIAL CIRCUIT

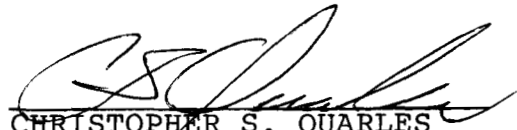


CHRISTOPHER S. QUARLES  
ASSISTANT PUBLIC DEFENDER  
112 Orange Avenue, Suite A  
Daytona Beach, Florida 32014  
Phone: 904/252-3367

ATTORNEY FOR PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been hand delivered to the Honorable Jim Smith, Attorney General, 125 N. Ridgewood Avenue, 4th Floor, Daytona Beach, Fla. 32014, in his basket at the Fifth District Court of Appeal and mailed to Mr. W.C. Reeves, #017808, P.O. Box 488, Polk City, Fla. 33868 on this 3rd day of November 1986.



CHRISTOPHER S. QUARLES  
ASSISTANT PUBLIC DEFENDER