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IN THE SUPREME COURT OF FLORIDA

W.C. REEVES,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

CASE NO. 69,548

PETITIONER'S BRIEF ON THE MERITS

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

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TABLE OF CONTENTS

	PAGE NO.
TABLE OF CONTENTS	i
TABLE OF CITATIONS	ii
PRELIMINARY STATEMENT	1
STATEMENT OF THE CASE AND FACTS	2
SUMMARY OF ARGUMENT	4
ARGUMENT COMMUNITY CONTROL IS NOT A FIRST CELL (ANY NONSTATE PRISON) SANCTION WITHIN THE MEANING OF THAT TERM IN THE SENTENCING GUIDELINES.	5
CONCLUSION	7
CERTIFICATE OF SERVICE	7

TABLE OF CITATIONS

	PAGE NO.
CASES CITED:	
Davis v. State 461 So.2d 1003 (Fla. 1st DCA 1984)	5
Louzon v. State 460 So.2d 551 (Fla. 5th DCA 1984)	5
Mestas v. State 484 So.2d 612 (Fla. 2d DCA 1986)	5
Mitchell v. State 463 So.2d 416 (Fla. 1st DCA 1985)	5
Reeves v. State 495 So.2d 238 (Fla. 5th DCA 1986)	3
OTHER AUTHORITIES:	
The Florida Bar Re: Rules of Criminal Procedure 482 So.2d 311 (Fla. 1985)	5,6
Section 790.02, Florida Statutes (1985)	2
Rule 3.701 Florida Rules of Criminal Procedure	5
Rule 3.701(d)(13), Florida Rules of Criminal Procedure	5
Rule 3.988, Florida Rules of Criminal Procedure	5

IN THE SUPREME COURT OF FLORIDA

W.C. REEVES, Petitioner,	)	
vs.	)	CASE NO. 69,548
STATE OF FLORIDA, Respondent.	)	

PETITIONER'S BRIEF ON THE MERITS

PRELIMINARY STATEMENT

Petitioner was the Appellant and Respondent was the Appellee in the District Court of Appeals, Fifth District of the State of Florida. In this brief, the Respondent will be referred to as "the State" and the Petitioner will be referred to as he appears before this Honorable Court.

STATEMENT OF THE CASE AND FACTS

On July 25, 1985, the state filed an information charging the Petitioner, W.C. Reeves, with the offense of carrying a concealed firearm in violation of Section 790.02, 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)

Petitioner 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 agreed and not to file charges involving possession of a firearm by a convicted felon.

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

A sentencing guidelines scoresheet was prepared resulting in a recommended nonstate prison sanction. (R30-31) The trial court adjudicated Petitioner 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 trial court allowed Petitioner 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 nonstate 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.

Reeves v. State, 495 So.2d 238 (Fla. 5th DCA 1986)(See Appendix attached hereto.)

A Notice to Invoke Discretionary Jurisdiction, based upon express and direct conflict was filed on October 24, 1986. This Court accepted jurisdiction by an Order dated January 23, 1987. This brief follows.

SUMMARY OF ARGUMENT

The District Court of Appeal, Fifth District, was incorrect in holding that community control is a first cell sanction within the meaning of that term under the guidelines. The Sentencing Guidelines Commission has recently expanded the committee note to Rule 3.701(d)(13) by clarifying the intent of the commission that community control is not to be considered as a nonstate prison sanction under the guidelines.

ARGUMENT

COMMUNITY CONTROL IS NOT A FIRST CELL (ANY NON-STATE PRISON) SANCTION WITHIN THE MEANING OF THAT TERM IN THE SENTENCING GUIDELINES.

The First and Fifth District Courts of Appeal have consistently held that community control is a nonstate prison sanction within the meaning of that term in the sentencing guidelines. See e.g. 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 simple rationale of these cases rested on the conclusion that community control simply is not a state prison sanction. Mestas v. State, 484 So.2d 612 (Fla. 2d DCA 1986), concluded that the sentencing guidelines category of any nonstate prison sanction does not include community control.

Petitioner submits that this issue has been clearly resolved in his favor as evidenced by the Florida Bar Re: Rules of Crim.Proc. 482 So.2d 311 (Fla. 1985). The sentencing guidelines commission petitioned this Court to adopt an amendment to Florida Rules of Criminal Procedure 3.701 and 3.988. Among the amendments was an expansion of the committee note to 3.701(d)(13) by adding the following sentence:

> "Community control is not an alternative sanction from the recommended range of any nonstate prison sanction unless the provisions of Florida Rule of Criminal Procedure 3.701(d)(11) are applied." This revision is intended to clarify the intent of the commission that community control is not to be considered as a nonstate prison sanction under the guidelines. (emphasis added).

The Florida Bar Re: Rules of Crim.Proc., supra at 312. It is therefore clear that the commission intended that community control not be considered a nonstate prison sanction under the guidelines.

CONCLUSION

For the reasons expressed herein, Petitioner respectfully requests that this Honorable Court reverse the District Court's decision holding that community control is a nonstate prison sanction within the meaning of that term in the sentencing guidelines.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been hand delivered to the Honorable Robert A. Butterworth, 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 16th day of February 1987.

CHRISTOPHER S. QUARLES
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