

No Request Case

IN THE SUPREME COURT
STATE OF FLORIDA



1937

SUPREME COURT
Deputy Clerk

W.C. REEVES,

Petitioner,

v.

CASE NO. 69,548

STATE OF FLORIDA,

Respondent.

RESPONDENT'S BRIEF ON THE MERITS

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SUMMARY OF ARGUMENT

The term "any non-state prison sanction" in sentencing guidelines applies to community control, as community control is not a state prison sanction. Community control is a non-incarcerative alternative to a prison sanction. Thus, community control is a proper sanction to be imposed under sentencing guidelines category of "any non-state prison sanction", and does not constitute a departure therefrom.

POINT ON APPEAL

WHETHER COMMUNITY CONTROL CONSTITUTES
A "NON-STATE PRISON SANCTION" WITHIN
THE MEANING OF THE SENTENCING GUIDE-
LINES RULES.

ARGUMENT

Petitioner entered a plea of guilty to carrying a concealed firearm and was placed on two years community control, with the special condition that he serve 51 weeks in the county jail. Under his sentencing guidelines scoresheet, petitioner was eligible for "any non-state prison sanction." (R 30-31): Fla. R. Crim. P. 3.988(h). The Fifth District Court of Appeal upheld the community control provision of petitioner's sentence relying upon Mitchell v. State, 463 So.2d 416 (Fla 1st DCA 1985), Davis v. State, 461 So.2d 1003 (Fla. 1st DCA 1984), and its own decision in Louzon v. State, 460 So.2d 551 (Fla. 5th DCA 1984). In Louzon, the Fifth District Court of Appeal reasoned:

". . . 'community control' does not encompass incarceration in state prison and therefore is properly classified as a 'non-state prison sanction'. See, §§ 948.10(1), 948.001(1), Florida Statutes (1983) . . ."

460 So. 2d at 552.

This same conclusion has been reached by the First District Court of Appeal in Mitchell and Davis, supra. In Mitchell, the court reasoned:

The terms "any non-state prison sanction" clearly apply to community control, as community control simply is not a state prison sanction. Community control is defined as a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered

by officers with restricted caseloads, and, further, defined as an individualized program in which the freedom of an offender is restricted within the community, home, or noninstitutional residential placement and specific sanctions are imposed and enforced. Section 948.001(1), Florida Statutes (1983). Section 948.01(4) states that the court may place an offender in a community control program, if it appears to the court that probation is an unsuitable dispositional alternative to imprisonment. Section 948.10(1) states that community control "shall offer the courts and the Parole and Probation Commission an alternative, community-based method to punish an offender in lieu of incarceration . . ." (emphasis added). Clearly, community control is not to be regarded as a state prison sanction. Rather, it is apparent to us that community control is a nonprison custodial alternative that was developed by the legislature to alleviate prison overcrowding. See Chapter 83-131 Fla. Laws, section 2. Accordingly, we find and hold that community control is a proper sanction to be imposed under the sentencing guidelines category of "any nonstate prison sanction." (footnote omitted).

463 So.2d at 418. The Mitchell court further stated that the fact that the guidelines specifically listed community control as an alternative to incarceration in the second guidelines cell should not preclude community control from being used as a dispositional alternative under the first guideline cell of "any non-state prison sanction." 463 So.2d 15 418, n.2.

The state acknowledges that recent amendments to the Florida Rules of Criminal Procedure, effective July 1, 1986, reflect a position contrary to that presented herein. The Florida Bar Re: Rules of Criminal Procedure, 482 So.2d 311 (Fla. 1985) (amending committee note (d)(13)). However, the state urges this court to consider this issue in light of the First District's reasoning in Mitchell and Davis, supra, as well as the Fifth

District in Louzon, supra.

Accordingly, the state urges this honorable court to resolve the conflict between the districts holding that community control does constitute a "non-state prison sanction" and may be imposed by a trial court without providing clear and convincing reasons where the defendant's sentencing scoresheet places him in the first guidelines cell calling for "any non-state prison sanction."

CONCLUSION

Based on the arguments and authorities presented herein, respondent respectfully prays this honorable court affirm the decision of the Fifth District Court of Appeal in all respects.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing Respondent's Brief on the Merits has been furnished by mail to Christopher S. Quarles, Assistant Public Defender, 112 Orange Avenue, Suite A, Daytona Beach, Florida 32014, counsel for the petitioner, this 9 day of March, 1987.



KEVIN KITPATRICK CARSON
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