

IN THE SUPREME COURT
OF FLORIDA

CHERYL SHIPLEY,

Petitioner,

v.

CASE NO.

STATE OF FLORIDA,

Respondent

71,371

CLERK OF THE SUPREME COURT
TAMPA, FLORIDA

DISCRETIONARY REVIEW OF DECISION OF
THE DISTRICT COURT OF APPEAL,
SECOND DISTRICT, STATE OF FLORIDA

JURISDICTIONAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

	<u>PAGE</u>
PRELIMINARY STATEMENT	1
SUMMARY OF ARGUMENT	1
ARGUMENT	2
<u>ISSUE</u>	2
WHETHER THE INSTANT DECISION CON- FLICTS WITH OTHER FLORIDA CASES WHICH HOLD THAT (1) LACK OF NOTICE IS FUNDAMENTAL ERROR AND (2) SEN- TENCING ERRORS APPARENT FROM THE FACE OF THE RECORD CAN BE APPEALED WITHOUT OBJECTION BELOW	
CONCLUSION	3
CERTIFICATE OF SERVICE	4

TABLE OF CITATIONS

	<u>PAGE</u>
Harris v. State 498 So.2d 1371 (Fla. 1 DCA 1986)	2
Jenkins v. State, 444 So.2d 947 (Fla. 1984)	3
Outar v. State, 508 So.2d 1311 (Fla. 5 DCA 1987)	2
Webber v. State, 497 So.2d 995 (Fla. 5 DCA 1986)	3

OTHER AUTHORITIES

Fla. Stat 27.3455	2.3
Fla. Stat 960.20 and 943.25 (4)	2

PRELIMINARY STATEMENT

Petitioner seeks discretionary review of the decision of the lower court reported as Shipley v. State, 512 So.2d 1135 (Fla. 2 DCA 1987). Respondent has received a copy of Petitioner's brief on jurisdiction and a copy of the lower court's decision as reported in 12 F.L.W. 2327.

SUMMARY OF ARGUMENT

Contrary to the lower court's assertion its opinion does not conflict with Outar or Harris, *infra*, because those cases discuss imposition of costs, the instant decision of the lower court discusses community service in lieu of costs.

ARGUMENT

ISSUE

WHETHER THE INSTANT DECISION CONFLICTS WITH OTHER FLORIDA CASES WHICH HOLD THAT (1) LACK OF NOTICE IS FUNDAMENTAL ERROR AND (2) SENTENCING ERRORS APPARENT FROM THE FACE OF THE RECORD CAN BE APPEALED WITHOUT OBJECTION BELOW.

The lower court's decision noted conflict with Outar v. State, 508 So.2d 1311 (Fla. 5 DCA 1987) and Harris v. State, 498 So.2d 1371 (Fla. 1 DCA 1986), but, with deference, we cannot see the conflict.

Each of those cases hold that imposition of costs pursuant to Fla. Stat 27.3455, without notice and an opportunity to be heard, even absent a contemporaneous objection is reversible error. The lower court reached the same decision with respect to imposition of costs under Fla. Stat 960.20 and 943.25(4). Moreover with respect to 27.3455 the court did not say that costs could be imposed without prior notice absent an objection. All it said was that community service in lieu of costs, under Fla. Stat 27.3455 (1985) could be imposed, even though there had been no prior notice, in the absence of a contemporaneous objection at the time that community service was ordered.

Outar and Harris discussed imposition of costs, without prior notice, absent objection. The instant case discussed the ordering of community service, as allowed under

Fla. Stat 27.3455, absent objection. The issues were different. There is no conflict. In fact both Outar and Harris imply that community service could have been ordered and not subject to review absent an objection.

The same holds true with respect to Jenkins v. State, 444 So.2d 947 (Fla. 1984), and Webber v. State, 497 So.2d 995 (Fla. 5 DCA 1986). They discuss imposition of costs, without notice and absent objection, not community service.

CONCLUSION

Based on the above and foregoing reasons arguments and authorities discretionary review should be denied.

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 U.S. Mail to Stephen Krosschell, Assistant Public Defender, P.O. Box 9000 - Drawer P.D., Bartow, Florida, 33830, on this 2nd day of November, 1987.


OF COUNSEL FOR RESPONDENT