IN THE SUPRME COURT OF FLORIDA

STATE OF FLORIDA,

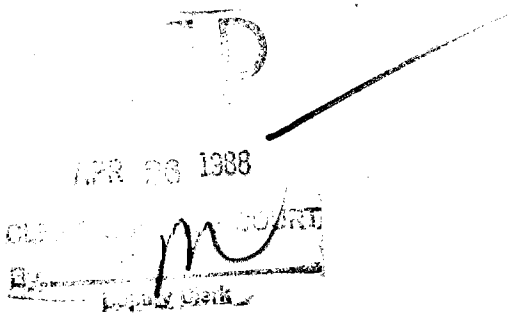
Petitioner,

vs.

CASE NO. 71,420

CLYDE GARLAND WAYNE,

Respondent.
_____/



PETITIONER'S REPLY BRIEF ON THE MERITS

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POINT ON APPEAL

THE DISTRICT COURT ERRED IN DETERMINING THAT RESPONDENT'S SPLIT SENTENCE WAS ERRONEOUS

Contrary to respondent's assertion, petitioner is very concerned about the integrity of probation. Unfortunately, we do not live in Utopia, and numerous probationers are not concerned with the integrity of probation. Perhaps this is why the guidelines state that the primary purpose of sentencing is to punish the offender, and rehabilitation must play a subordinate role. Fla. R. Crim. P. 3.701(b)(2). Consequently, petitioner is very concerned with the integrity of the sentencing procedure in Florida.

As the situation stands, there is virtually no way for a trial court to impose a split sentence without generating an appeal. The guidelines clearly provide for the imposition of a split sentence, so long as the incarcerative portion is within the guidelines range and the total sanction does not exceed the term provided by general law. See Committee Note (d)(12), Fla. R. Crim. P. 3.701. Yet when the trial court imposes such a sentence, the defendant appeals based upon the fact that if he violates probation and is recommitted, the incarcerative portion may then exceed the original guidelines range.

Petitioner is not attmpting to walk this court down the "garden path", for petitioner recognizes that any such path is frought with thorns, brambles and pitfalls. Petitioner submits that the trial courts are currently in need of navigational assistance down that path. If the method of imposing a split sentence turns on a semantic distinction, with the result being

that one of those methods (i.e. incarceration merely followed by probation) violates double jeopardy upon recommitment of the defendant, then so be it. Eliminate the first paragraph of the "split sentence" form in Florida Rule of Criminal Procedure 3.986.

At the same time, this will leave only the other method (i.e. imposition of a total term with a portion withheld), which, as already stated, will generate an appeal each time it is utilized. As such, it would seem that trial court would be limited to imposing the total sanction (incarceration and probation) within the original recommended incarcerative range. Such a situtation not only runs afoul of the philosophy of the guidelines, but presents a dichotomy between judicial and legislative prescription of punishment, and further presents serious potential for judicial encroachment on legislative powers.

Petitioner offered one possible method of harmonizing the guidelines and split sentence in its initial brief. Petitioner submits there is another and better solution, and that is elimination of the guidelines.

CONCLUSION

Based on the arguments and authorities presented herein, appellee respectfully prays this honorable court affirm the judgment and sentence of the trial court in all respects.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing answer brief has been furnished by mail to: Michael L. O'Neill, Assistant Public Defender, 112 Orange Avenue, Suite A, Daytona Beach, FL 32014 on this 25 day of April, 1988.

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