IN THE SUPREME COURT OF THE STATE OF FLORIDA

CARLOS SANCHEZ,	)	
	)	
Petitioner,	)	Case No.
	)	
Versus	)	
	)	DCA Case No. 87-2197
STATE OF FLORIDA,	)	
	)	
Respondent.	)	

INITIAL BRIEF OF PETITIONER

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TABLE OF CASES AND AUTHORITIES

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PRELIMINARY STATEMENT

Petitioner, CARLOS SANCHEZ, was the defendant in the lower court proceedings and the Appellant in the proceedings before the Fourth District Court of Appeal of the State of Florida. Respondent, STATE OF FLORIDA, was the prosecution in Circuit Court and the Appellee before the District Court of Appeal of the State of Florida.

The symbol "R" refers to the Record on Appeal in this cause, and the numerical designation following, within the same parenthesis, refers to the applicable page number within that said Record on Appeal where the identifiable issue which is the subject of description can be found.

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STATEMENT OF THE CASE

The Petitioner, CARLOS SANCHEZ, was charged by Information with Trafficking in Cannabis and Conspiracy to Traffick in Cannabis. These criminal offenses were alleged to have been committed on January 11 and January 12, 1985 (R. 1).

On May 29, 1985, the case was resolved in the following manner: CARLOS SANCHEZ entered a plea of guilty to Count II, Conspiracy to Traffick in Cannabis. A nolle prosequi was entered by the State on Count I, and in addition the State waived the mandatory minimum requirements of Florida Statutes §893.135 et. seq. The Defendant was adjudicated guilty by the Court and was placed on probation for a period of three years (R. 2, 3).

On June 12, 1987, while CARLOS SANCHEZ was still on probation, a Motion to Mitigate was filed by the defense requesting that probation be terminated due to the successful completion of two-thirds of the original term (R. 11). A Supplemental Motion was also filed, on June 24, 1987, requesting that the Court's original adjudication of guilt be vacated and/or set aside. A hearing on both of these issues was held on July 23, 1987, and the following rulings were made by the Court:

(a) the Motion to Mitigate the term of probation was granted

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(R. 14); however, (b) the Supplemental Motion to Vacate the adjudication of the Defendant was denied. The trial court's denial was based on the authority purportedly issued by the Fourth District Court of Appeal in Beardsley v. State, 464 So.2d 188 (4th DCA 1985). The trial court was of the opinion that it had neither the jurisdiction nor the authority to grant the relief requested (R. 15). It is from that order that an appeal was taken.

On April 20, 1988, the Fourth District Court of Appeal affirmed the trial court, per curiam, but certified conflict between State v. Beardsley, 464 So.2d 188 (Fla. 4th DCA 1985) and Thompson v. State, 485 So.2d 42 (Fla. 1st DCA 1986), as to whether an adjudication of guilt, imposed in conjunction with a probation sentence, may be vacated after sixty days incident to the authority of the sentencing court regarding the probation supervision.

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STATEMENT OF THE FACTS

The Petitioner would recite, essentially, the same facts as those set forth in the Statement of the Case.

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POINT ON APPEAL

THE TRIAL COURT ERRED IN DENYING THE DEFENDANT'S SUPPLEMENTAL MOTION TO TERMINATE/VACATE PROBATION ON THE BASIS THAT IT HAD NO JURISDICTION, NOR AUTHORITY, TO VACATE AND SET ASIDE AN ADJUDICATION OF GUILT, PREVIOUSLY ENTERED, BUT MOVED BEFORE THE TIME OF THE TERMINATION OF PROBATION.

SUMMARY OF ARGUMENT

Although probation is a part of the sentencing process, probation itself is not a sentence. Addison v. State, 452 So.2d 955 (Fla. 2nd DCA 1986). Florida Rule of Criminal Procedure 3.800(b) provides for the reduction or modification of a legal sentence imposed by a court if such relief is applied for within sixty days. Since probation is not a sentence, the jurisdictional restrictions of Rule 3.800(b) are not applicable. The court retains jurisdiction over the terms and conditions of probation for as long as the probationary period lasts, and may make whatever modifications that it believes fairness requires. Florida Statutes 948.01, 948.05.

Once probation is imposed, any punishment imposed is a condition of probation as opposed to a "legal sentence" in and of itself. See Villery v. Florida Parole and Probation Commission, 396 So.2d 1107 (Fla. 1980) (incarceration of defendant as a condition of probation does not constitute a

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"sentence").

The decision whether to impose adjudication is essentially a question of the degree of punishment to be imposed. Thompson v. State, 485 So.2d 42 (Fla. 1st DCA 1986). To take away the trial court's ability to reward a probationer for a successful and well accomplished effort toward rehabilitation would be an unnecessary limitation and contrary to the statutory intent of Sections 921.187 and 948.01. See Thompson, supra.

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ARGUMENT

In denying the Defendant's Motion to Vacate his previously imposed adjudication of guilt, the trial court relied on the language set forth in State v. Beardsley, supra. The Court believed neither the jurisdiction nor the authority existed to grant such a withdrawal of adjudication.

Petitioner would submit, however, that when probation was imposed by the trial court no sentence was imposed. Addison v. State, supra. Jurisdiction and authority over the terms and conditions of probation were thereby retained by the trial court throughout the period of probation pursuant to Florida Statutes 921.187, 948.01 and 948.05. A trial court may revoke, revise or modify for cause probation and incarceration provisions at any time during the period that the order is in force and impose any sentence which might have been originally imposed. State v. Jones, 327 So.2d 18 on remand 330 So.2d 189 (Fla. 1976).

Florida Rule of Criminal Procedure 3.800(b) provides for the reduction or modification of a legal sentence imposed by the court if such relief is applied for within sixty days. The purpose of this sixty day rule is to extend to trial courts the ability to make necessary corrections and adjustments to the terms of a sentence, should some inequity arise which was not anticipated, by extending the court's jurisdiction

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over its sentence. In the instant case, since no legal sentence was imposed, the sixty day limit does not apply. Such an extension of jurisdiction would be unnecessary since jurisdiction is already extended by the Order of Probation.

Rehabilitation, however, by its very nature requires a considerably greater degree of supervision and flexibility than does punishment alone. The purpose of probation is rehabilitation and any punishment imposed as a condition of probation is to be considered as merely an element in the overall rehabilitative scheme. The incarceration of a defendant, for example, as a condition of probation does not constitute a "sentence". A sentence and a "probation" are discrete concepts which serve different functions; imposed as a sentence, imprisonment serves as a penalty, but if imposed as an incident of probation, imprisonment serves as a rehabilitative device. Villery v. Florida Parole and Probation Commission, supra. When probation is imposed, therefore, the clear statutory intent of Sections 948.01 and 948.05 is that the trial court should retain jurisdiction throughout the period of probation, to better control the rehabilitative environment of an individual probationer. A trial court has broad discretion to impose probation conditions which, in the trial courts opinion, foster rehabilitation. Florida Statutes 948.03(4), Walker v.

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State, 461 So.2d 229 (Fla. 1st D.C.A. 1984).

To say that the court may not, beyond sixty days, reward the successful efforts of a probationer in rehabilitating himself would be an illogical and unnecessary restriction of the trial courts' powers. This is particularly clear when juxtaposed with the fact that the reverse is unquestionably true, that the court may adjudicate a probationer whose conviction was previously withheld, as a punishment for bad performance while on probation. See Beardsley, supra.

As in Thompson, supra, the decision whether to impose adjudication is essentially a question of the degree of punishment to be imposed. To allow an opposing construction of this issue, that an adjudication of guilt is itself a "sentence" imposed simultaneously with a probation, would be directly counter to this Court's ruling in Villery, supra, that probations and sentences are discrete concepts. The more logical construction is that when probation is imposed, a trial court may make any modifications which it deems suitable and impose any sentence which it might originally have imposed, as in State v. Jones, supra.

Some cases require that a defendant be extended a second chance, with the possibility of severe consequences in the event of failure. Other cases require immediate punishment,

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to be followed later on by reward for successful accomplishment. To deny the supervising court this latter alternative would be to take away from that court a very real and compelling "carrot" to dangle before a probationer in the event that his probation is well accomplished - a cleansed record as an extra boost when beginning his attempts to re-establish his life on his own, unsupervised.

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CONCLUSION

WHEREFORE, the Petitioner respectfully requests, and urges, that this Honorable Court reverse the trial court's order denying the Supplemental Motion to Mitigate in this cause, and remand to the court for its consideration as to whether or not it is appropriate, under its discretion, to order the adjudication of guilt previously imposed in this cause to be withdrawn, and the Defendant to be left with no adjudication after the term of probation has expired.

Respectfully submitted,

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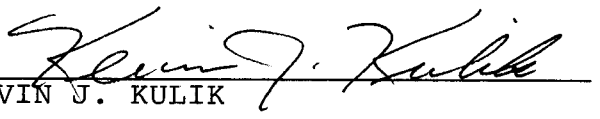
BY 
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