

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v.

JAMES WATTS, ET AL.

Respondent.

Case No. 72-111 Clerk

FILED  
JUN 14 1968  
CLERK, SUPREME COURT

---

ON PETITION FOR DISCRETIONARY REVIEW

---

BRIEF OF PETITIONER ON THE MERITS

ROBERT A. BUTTERWORTH  
ATTORNEY GENERAL

DONNA A. PROVONSHA  
Assistant Attorney General  
Florida Bar # 0768979  
1313 Tampa Street, Suite 804  
Park Trammell Building  
Tampa, Florida 33602  
(813) 272-2670

TABLE OF CONTENTS

	<u>PAGE NO.</u>
INTRODUCTION.....	1
STATEMENT OF THE CASE AND FACTS.....	2
SUMMARY OF THE ARGUMENT.....	5
QUESTION PRESENTED	
WHETHER THE TRIAL COURT ERRED IN SENTENCING DEFENDANTS TO A TERM OF IMPRISONMENT IN EX- CESS OF SIX YEARS UPON REVOCATION OF YOUTHFUL OFFENDER.....	6
ARGUMENT	
THE TRIAL COURT DID NOT ERR IN SENTENCING DEFENDANTS TO A TERM OF IMPRISONMENT IN EX- CESS OF SIX YEARS UPON REVOCATION OF YOUTH- FUL OFFENDER COMMUNITY.....	7
CONCLUSION.....	9
CERTIFICATE OF SERVICE.....	9

TABLE OF CITATIONS

	<u>PAGE NO.</u>
<u>Castle v. State.</u> 330 So.2d 10 (Fla. 1976).....	7
<u>Franklin v. State.</u> 526 So.2d 159 (Fla. 5th DCA 1988).....	7
<u>State v. Pizarro,</u> 383 So.2d 762 (Fla. 4th DCA 1980).....	7
 <u>OTHER AUTHORITIES</u>	
Article X. Section 9. Fla. Constitution.....	7
Section 958.14, Florida Statutes.....	7

## INTRODUCTION

The Petitioner, THE STATE OF FLORIDA, was the appellee in the district court and the prosecution in the trial court. The Respondents, JAMES WATTS and STEVEN SMITH were the appellants in the district court and defendants in the trial court. The parties will be referred to as they stood before the trial court or by their given names.

The symbol "R" will designate the record on appeal; the symbol "AR" will designate the adopted record of JAMES WATTS from the appellate case of STEVEN SMITH; and the symbol "A" will designate the Appendix to this brief.

STATEMENT OF THE CASE AND FACTS

Defendant JAMES WATTS and his co-defendant STEVEN SMITH had identical issues in the Second District Court of Appeals.

Defendant JAMES WATTS was adjudicated guilty for armed robbery in July 1985 and was sentenced as a youthful offender. (Watts R. 24-25) The armed robbery took place in April 1985. (Smith R. 3-4). Defendant Watts was sentenced as a youthful offender to four years incarceration followed by two years of community control. (Watts R. 24). The guidelines recommended a presumptive sentence of four years. (Watts R. 64). On February 19, 1988 an affidavit alleging violations of community control was filed against defendant Watts. (Watts R. 3-4). On March 24, 1988 defendant Watts pled guilty to the violations. (Watts R. 9-13). Defendant Watts' community control was revoked and the trial court did not reclassify him as a youthful offender. (Watts R. 19, 21). The trial court then imposed a ten year sentence based on defendant Watts' extensive unscorable juvenile record. (Watts R. 19, 21, 26, 28).

Defendant STEVEN SMITH was adjudicated guilty for armed robbery in September 1985. (Smith R. 8a) The armed robbery took place in April 1985. (Smith R. 3-4). Defendant Smith was sentenced as a youthful offender to four years incarceration followed by two years of community control. (Smith R. 11-14). The guidelines recommended a presumptive sentence of three years.

(Smith R. 13). On January 28, 1988 an affidavit alleging violations of community control was filed against defendant Smith. (Smith R. 23). On March 24, 1988 defendant Smith pled guilty to the violation of community control. (Smith R. 28-31). Defendant Smith's community control was revoked and the trial court did not reclassify him as a youthful offender. (Smith R. 43). The trial court then imposed a ten year sentence based on defendant SMITH's extensive unscorable juvenile record. (Smith R. 43-44, 51).

On appeal in the Second District the defendants contended that Section 958.14, Florida Statutes (1985) limits the sentence a trial court may impose upon as youthful offender after a revocation of community control to six years or the maximum statutory term, whichever is less. Therefore, the sentences imposed after the revocations were unlawful and required reversal.

The Second District agreed that the 1985 amendment to Section 958.14, Florida Statutes, imposes a six year limitation on the sentence of imprisonment that can be imposed upon a revocation of a youthful offender's probation or community control. Watts v. State, 14 F.L.W. 1014 (Fla. 2nd DCA, April 21, 1989)(A 1-25) In so doing, the Second District certified conflict with the Fifth District's opinion in Franklin v. State, 526 So.2d 159 (Fla. 5th DCA 1988). (A. 3-7).

In order to insure statewide uniformity of the law in this area, the State sought this Court's discretionary review. On May 10, 1989 the Second District stayed the mandates herein.

SUMMARY OF THE ARGUMENT

The amendment to Section 958.14, Florida Statutes does not limit the trial court's discretion on resentencing after revoking a defendant's probation. The position is the only proper interpretation of the legislative intent behind the statute inasmuch as any other interpretation would unduly bridle the trial court's sentencing discretion. This interpretation is supported by the interpretation of analogous provision of the federal Youth Corrections Act.



QUESTION PRESENTED

WHETHER THE TRIAL COURT ERRED IN SENTENCING DEFENDANTS TO A TERM OF IMPRISONMENT IN EXCESS OF SIX YEARS UPON REVOCATION OF YOUTHFUL OFFENDER COMMUNITY CONTROL IMPOSED BY SECTION 958.14, FLORIDA STATUTES

ARGUMENT

THE TRIAL COURT DID NOT ERR IN SENTENCING DEFENDANTS TO A TERM OF IMPRISONMENT IN EXCESS OF SIX YEARS UPON REVOCATION, OF YOUTHFUL OFFENDER COMMUNITY CONTROL IMPOSED BY SECTION 958.14, FLORIDA STATUTES

Petitioner accepts and adopts the Brief of Petitioner on the Merits in Case No. 73,841 served on June 6, 1989. (A 9-44) In addition to adopting the brief in Case No. 73,841, Petitioner supplements that brief with the following:

Petitioner submits the decision in Franklin v. State, 526 So.2d 159 (Fla. 5th DCA 1988) (A 3-8) is correct since it is in keeping with Article X, Section 9, Fla. Constitution. This provision of the Constitution provides "Repeal or amendment of a criminal statute shall not affect prosecution or punishment for any crime previously committed." The courts implement this provision to prevent criminals from claiming the benefit of reductions in punishments enacted after their crimes. Castle v. State, 330 So.2d 10 (Fla. 1976) and State v. Pizarro, 383 So.2d 762 (Fla. 4th DCA 1980).

Respondents committed their offenses on April 10, 1985. (Smith R. 3-4). Section 958.14, Florida Statutes was changed to the present reading on July 1, 1985. Therefore, the statute in effect at the time the crime was committed was the prior version of Section 958.14 which allowed sentencing upon revocation to be any sentence within the statutory maximum or within the

guidelines, or any sentence that could have originally been imposed.


It is also important to note that Acting Chief Judge Danahy concurring specifically in the Second District opinion sub judice noted that he remained doubtful that the legislature clearly stated its intent to cap the term of imprisonment to six years upon violation of community control and resentencing. (A. 2 ). Moreover, he realized that their decision severely harnesses judicial discretion at resentencing. (A. 2). Indeed, the effect of such decisions may abrogate the use of the Youthful Offender Act by trial judges if they know they will be restricted or severely harnessed in resentencing upon revocation of community control or probation.

CONCLUSION

Based on the above and foregoing reasons, arguments and citations of authorities as well as the points and authorities in the brief in Case No. 73,841, the State respectfully requests this Court to quash the Second District's decision sub judice and reinstate the defendants' sentences.

Respectfully submitted

ROBERT A. BUTTERWORTH  
ATTORNEY GENERAL



DONNA A. PROVONSHA  
Assistant Attorney General  
Florida Bar # 0768979  
1313 Tampa Street, Suite 804  
Park Trammell Building  
Tampa, Florida 33602  
(813) 272-2670

COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to: Andrea Steffen, Assistant Public Defender, P.O. Box 9000-Drawer PD, Bartow, Florida and Michael J. Neimand, Assistant Attorney General, Suite N-921, 401 Northwest 2nd Avenue, Miami, Florida, 33128 on this 12<sup>th</sup> day of June, 1989.



---

OF COUNSEL FOR PETITIONER