

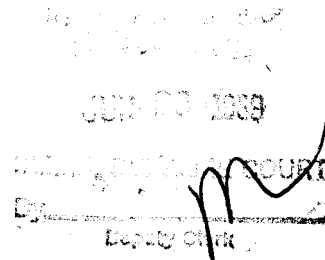
IN THE SUPREME COURT OF FLORIDA

KENNETH SKEENS,  
Petitioner,

v.

Case No. 74,047 <sup>211</sup>

STATE OF FLORIDA,  
Respondent.



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

BRIEF OF RESPONDENT ON JURISDICTION

ROBERT A. BUTTERWORTH  
ATTORNEY GENERAL

MICHELE TAYLOR  
Assistant Attorney General  
Florida Bar No. 0616648  
1313 Tampa Street, Suite 804  
Park Trammell Building  
Tampa, Florida 33602  
(813) 272-2670

COUNSEL FOR RESPONDENT

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Summary of the Argument

Any conflict as to whether community control and probation may be imposed in tandem has been resolved in accordance with the Second District position by the 1986 amendment to section 3.701(d)(13) of the Florida Rules of Criminal Procedure, which expressly allows the imposition of such sentence. Therefore, conflict no longer exists, and this Honorable Court should refuse to exercise discretionary jurisdiction to review this case.

Araument

WHETHER THE DECISION IN SKEENS v. STATE,  
No. 87-813 (Fla. 2d DCA April 26, 1989)  
[14 F.L.W. 1060], IS IN CONFLICT WITH THE  
FIRST AND FOURTH DISTRICT COURTS OF APPEAL  
AS TO WHETHER OR NOT COMMUNITY CONTROL AND  
PROBATION CAN BE IMPOSED IN TANDEM?

The Second District Court of Appeal in the instant case, relying on Burrell v. State, 483 So.2d 479 (Fla. 2d DCA 1986), held that community control and probation may be imposed in tandem. The Court expressed disagreement with the opinion of the First District in Williams v. State, 464 So.2d 1218 (Fla. 1st DCA 1984) and Mitchell v. State, 463 So.2d 416 (Fla. 1st DCA), cause dismissed, 469 So.2d 750 (1985), and with the Fourth District in Chessler v. State, 467 So.2d 1102 (Fla. 4th DCA 1985).

Respondent would note that Burrell, Mitchell, Williams, and Chessler were all decided prior to July, 1986. The apparent conflict has been resolved in accordance with the Second District holding by the amendment to the committee note to rule 3.701(d)(13) of the Florida Rules of Criminal Procedure, which provides in part:

It is appropriate to impose a sentence of community control to be followed by a term of probation. The total sanction (community control and probation) shall not exceed the term provided by general law.<sup>1</sup>

The issue under consideration in the instant case has become moot. Therefore, no conflict presently exists for review by this Honorable Court.

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<sup>1</sup> The amendment became effective on July 1, 1986. See The

Conclusion

Based upon the foregoing reasons, arguments, and citations of authority, Respondent would pray that this Honorable Court decline to exercise its discretionary jurisdiction to review this case.

Respectfully submitted,

ROBERT A. BUTTERWORTH  
ATTORNEY GENERAL

*Michele Taylor*

MICHELE TAYLOR  
Assistant Attorney General  
Florida Bar No. 0616648  
1313 Tampa Street, Suite 804  
Park Trammell Building  
Tampa, Florida 33602  
(813)272-2670

COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Jennifer Y. Fogle, Assistant Public Defender, P.O. Box 9000--Drawer PD, Bartow, Florida, 33830, this 23<sup>rd</sup> day of June 1989.

*Michele Taylor*

OF COUNSEL FOR RESPONDENT

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Florida Bar Re: Rules of Criminal Procedure, (Sentencing Guidelines, 3.701,3.988), 482 So.2d 311 (Fla. 1985).