

IN THE SUPREME COURT OF FLORIDA

CASE NO. 74,299

DONALD COLE,
Petitioner,

vs.

THE STATE OF FLORIDA,
Respondent.

FILED
C
SUPREME COURT
Dep. Clerk *pl*

ON PETITION FOR DISCRETIONARY REVIEW

BRIEF OF RESPONDENT ON THE MERITS

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INTRODUCTION

The Petitioner Donald Cole, was the Appellant in the District Court and the Defendant in the trial court. The Respondent, the State of Florida, was the Appellee in the District Court and the prosecution in the trial court. The parties will be referred to as they stood before the trial court. The symbol "R" will designate the record on appeal: the symbol "T" will designate the transcript of proceeding and the symbol "A" will designate the Appendix to this brief.

STATEMENT OF THE CASE AND FACTS

The State accepts the Defendant's Statement of the Case and Facts as a substantially accurate account of the proceedings below.

SUMMARY OF THE ARGUMENT

Defendant contends that upon resentencing after revocation of probation, he is entitled to credit for time served for his accumulated gain time. Based on the recent decision of this Court, Defendant's position is well taken.

QUESTIONS PRESENTED

WHETHER THE DEFENDANT IS ENTITLED TO INCLUDE EARNED GAIN-TIME WHEN COMPUTING TIME SERVED TO CREDIT AGAINST THE SENTENCE IMPOSED AFTER REVOCATION OF COMMUNITY CONTROL WHICH IS PART OF A PROBATIONARY SPLIT SENTENCE.

ARGUMENT

THE DEFENDANT¹ IS ENTITLED TO INCLUDE EARNED GAIN-TIME WHEN COMPUTING TIME SERVED TO CREDIT AGAINST THE SENTENCE IMPOSED AFTER REVOCATION OF COMMUNITY CONTROL WHICH IS PART OF A PROBATIONARY SPLIT SENTENCE.

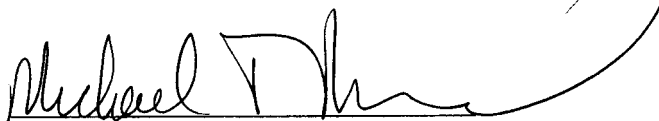
Based on this Court's recent decision of State v. Green, 14 F.L.W. 362 (Fla. July 20, 1989) the Defendant is entitled to have his gain time be counted as credit time served upon revocation of probation and reincarceration.

CONCLUSION

Based on the foregoing the Defendant is entitled to the relief requested regarding gain time.

Respectfully submitted,

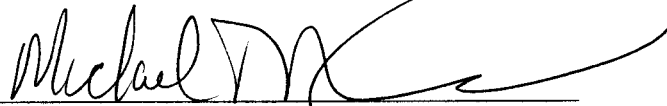
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing BRIEF OF RESPONDENT was furnished by mail to SHARON JACOBS BROWN, Attorney for Petitioner, Coconut Grove Bank Building, Suite 305, 2701 South Bayshore Drive, Miami, Florida 33133, on this 17 day, of October, 1989.



MICHAEL J. NEIMAND
Assistant Attorney

mls/