IN THE SUPREME COURT OF FLORIDA

JOHN DONAHUE CRAWFORD,

Petitioner,

v. CASE NO. 75,822

STATE OF FLORIDA,

Respondent.

_____/

PETITIONER'S BRIEF ON THE MERITS

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I PRELIMINARY STATEMENT

Petitioner, JOHN DONAHUE CRAWFORD, was the appellant in the District Court of Appeal, First District, and defendant in the circuit court. Respondent, the State of Florida, was the appellee and prosecuting authority, respectively. The parties will be referred in this brief as they appear before the Court.

The record on appeal consists of one volume of pleadings, which will be referred to as "R," followed by the appropriate page number in parenthesis, and a one volume transcript of the proceedings in the lower court, which will be referred to as "T." The appendix will be designated as "A."

II STATEMENT OF THE CASE AND FACTS

Petitioner was charged in Case No. **89-1,** with burglary of a conveyance with intent to commit theft (Count I), and petit theft of a cassette player (Count 11), which offenses occurred on December **28, 1988** (R **1).**

On April 10, **1989,** petitioner entered guilty pleas to both counts in Case No. **89-1** and to a violation of probation in Case No. **88-113,** in exchange for an agreement with the state that he be placed on community control in both cases (R **13-15, 16, 19;** T **2-4).** Petitioner scored **66** points on the guidelines score-sheet, placing him in the range of any non-state prison (R **20).**

The trial court revoked petitioner's probation in Case No. **88-113,** adjudicated him guilty and placed him on community control for two years. In Case No. **89-1,** the court placed him on community control for two years in Count I, to run consecutive to the two years' community control in Case No. **88-113,** and to a term of sixty days' probation in Count 11, to run concurrent to the community control in Count I (R **21-26;** T **4-7).**

A notice of appeal was timely filed on April **21, 1989** (R **27).** On direct appeal to the First District Court, petitioner argued that his consecutive terms of community control exceeded the two year statutory limitation in Section **948.01(5),** Florida Statutes **(1988).** The District Court rejected this argument on the authority of Sanchez v. State, **538 So.2d 923** (Fla. 5th DCA **1989),** and Mick v. State, **506 So.2d 1121** (Fla. 1st DCA **1987)(A** 1), but certified the following question as one of great public importance:

> Does Section 948.01(5), Florida Statutes (Supp. 1988) limit the duration of community control to a single two-year period when the defendant is sentenced at the same sentencing hearing for multiple offenses charged in a single information?

(A 2).

On April 9, 1990, petitioner filed a notice to invoke this Court's discretionary review (A 3). This appeal follows.

III SUMMARY OF ARGUMENT

Petitioner contends that the trial court erred in imposing consecutive two year terms of community control on petitioner, for a total sanction of four years, which sanction violates the two year limitation on community control as provided by general law. Section 948.01(5), Florida Statutes (1988). Florida Rule of Criminal Procedure 3.701(d)(13) provides that when community control is imposed, the term shall not exceed the term provided by general law. Further, the court must utilize one guidelines scoresheet for each defendant covering all offenses pending before the trial court for sentencing, Fla.R.Crim.P. 3.701(d)(1), and when the court imposes sentences for separate offenses, the total sentence cannot exceed the total guideline sentence, Fla. R.Crim.P. 3.701(d)(12). Consequently, consecutive sentences of community control cannot exceed the two years provided by law, when sentences for various pending offenses are imposed at the same sentencing proceeding.

Petitioner requests that this Court answer the certified question affirmatively and reverse his consecutive sentences of community control.

IV ARGUMENT

ISSUE PRESENTED

THE TRIAL COURT ERRED IN IMPOSING CONSECUTIVE TWO YEAR TERMS OF COMMUNITY CONTROL ON PETITIONER, FOR A TOTAL SANCTION OF FOUR YEARS, IN CONTRAVENTION OF SECTION 948.01(5), FLORIDA STATUTES (1988), AND FLORIDA RULE OF CRIMINAL PROCEDURE 3.701.

Section 948.01(5), Florida Statutes (1988), provides in pertinent part:

> (5) The sanctions imposed by order of the court shall be commensurate with the seriousness of the offense. When community control or a program of public service is ordered by the court, the duration of community control supervision or public service may not be longer than the sentence that could have been imposed if the offender had been committed for the offense or a period not to exceed 2 years, whichever is less. . . .

Although the question of consecutive terms of community control exceeding two years is not expressly addressed in the statute, the maximum period of such supervision was clearly intended to be no longer than two years. The language of the statute is explicit in restricting "the duration of community control supervision," whether such is imposed pursuant to one charge or to multiple offenses, to a two year maximum.

"Community control" is a form of intensive, supervised custody in the community involving restriction on the freedom of the offender. See Section 948.001, Florida Statutes (1987); Florida Rule of Criminal Procedure 3.701(d)(13). Rule 3.701(d)(13) expressly provides that when community control is imposed, it shall not exceed the term provided by general law, i.e., two

years. Rule 3.701(d)(1) requires that the trial court utilize one scoresheet for each defendant covering all offenses pending before the court for sentencing, and Rule 3.701(d)(12) provides that a sentence must be imposed for each offense, however, the total sentence cannot exceed the total guidelines sentence. The import of these rules is that when community control is imposed for multiple offenses, the total sanction cannot exceed the two year term provided by general law.

Community control falls within the guidelines range of 12 to 30 months, see Fla.R.Crim.P. 3.988, and the committee note to Rule 3.701(d)(13) indicates that it is an alternative to a state prison sentence less than 24 months. This means that a commitment to community control must be for a period less than 24 months, whether it is imposed for one or multiple offenses, which is the maximum term provided by general law.

There is clear legislative intent that the commitment to community control not exceed two years. It is noteworthy that Section 948.04, Florida Statutes, provides that defendants who are placed on probation upon conviction for a felony "shall be under supervision not to exceed 2 years unless otherwise specified by the court." There is no such caveat under the statute in question here, signifying the legislature's intent to limit the duration of community control to two years.

In accordance with this manifest legislative intent, the Department of Corrections, in its implementation manual, also recognized that the intensive supervision on community control (with or without adjudication of guilt) was limited to a maxi-

mum of two years. See Department of Corrections Implementation Manual for Community Control, Working Draft, Section IV (F, G) (A 5-34). The Department never anticipated supervising a single offender on house arrest for more than two years, nor did the legislature authorize a court to impose house arrest for a period exceeding two years.

The appellate courts have repeatedly recognized that community control supervision is limited by statute to two years. see Lewis v. State, 532 So.2d 1340 (Fla. 4th DCA 1988); Keast v. State, 472 So.2d 855 (Fla. 3d DCA 1985); Davis v. State, 461 So.2d 1003 (Fla. 1st DCA 1984); Hudson v. State, 450 So.2d 603 (Fla. 2d DCA 1984). However, in Mick v. State, 506 So.2d 1121 (Fla. 1st DCA 1987), the First District Court held that Section 948.01(5) does not limit the duration of community control to two years when an offender is sentenced at the same sentencing hearing for multiple offenses charged in separate informations but rather, two years is the maximum permissible period of community control for any one offense. Accord, Sanchez v. State, 538 So.2d 923 (Fla. 5th DCA 1989). Petitioner maintains that this holding is contrary to the Rules of Criminal Procedure, as well as the plain wording of the statute and the intent of the legislature. See Allen v. State, 526 So.2d 69 (Fla.1988)(court cannot sentence youthful offender to consecutive terms for multiple offenses so that the total sanction exceeds the six year maximum prescribed in the youthful offender statute).

This Court, though not specifically addressing the matter of consecutive community control terms, has recently held that

a court cannot impose successive sentences exceeding one year in the county jail, if the sentences for pending offenses are imposed at the same sentencing hearing. Singletary v. State, 554 So.2d 1162 (Fla. 1990). In Singletary, this Court resolved an apparent conflict between Section 922.051, Florida Statutes, which permits imprisonment in the county jail if the total of the prisoner's cumulative sentences is not more than one year, and Section 921.0015, Florida Statutes, which adopted the sentencing guidelines but is silent on the length of county jail terms. In harmonizing the two statutes, the Court ruled that the sentencing guidelines were subject to the one-year county jail limitation, and noted that under Florida Rule of Criminal Procedure 3.701(d)(1), one guideline scoresheet must be used for each defendant covering all offenses pending before the court for sentencing.

In the instant case, the guidelines and Section 948.01(5) are harmonious. The guidelines specifically limit the period of community control to the term provided by general law, i.e., two years. Under the rationale of Singletary, the trial court cannot impose successive sentences of community control which exceed two years, when sentences for various pending offenses are imposed at the same sentencing hearing.

In the instant case, petitioner was sentenced in the same sentencing proceeding to a two year period of community control upon the revocation of probation in Case No. 88-113 followed by another two year period of community control in Case No. 89-1.

These cumulative sentences exceed the statutory maximum term of two years supervision on community control and are illegal.

Petitioner requests, therefore, that this Court answer the certified question in the affirmative, reverse the decision of the district court and remand the cause to the trial court for resentencing.

V CONCLUSION

Based upon the foregoing argument, reasoning and citation of authority, petitioner respectfully requests that this Court vacate the opinion of the district court, reverse petitioner's consecutive sentences and remand for resentencing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Petitioner's Brief on the Merits has been furnished by hand-delivery to William A. Hatch, Assistant Attorney General, The Capitol, Tallahassee, Florida, **32302**; and a copy has been mailed to Mr. John D. Crawford, Post Office Box 145, Hampton, Florida, **32044**, on this 7th day of May, **1990**.

Paula S. Saunders
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