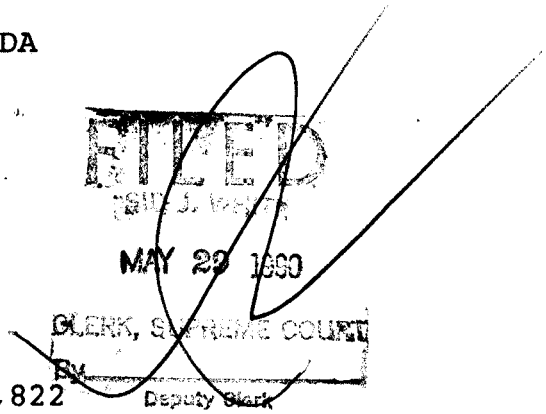
IN THE SUPREME COURT OF FLORIDA



JOHN DONAHUE CRAWFORD,

Petitioner,

v. CASE NO. 75,822

STATE OF FLORIDA,

Respondent.

RESPONDENT'S BRIEF ON THE MERITS

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TABLE OF CONTENTS

TABLE OF CITATIONS

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RELIMINARY TATEMENT

Petitioner, John Donahue Crawford, was the appellan, 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(s) in parenthesis, and a one volume transcript of the proceedings in the lower court, which will be referred to as "T."

STATEMENT OF THE CASE AND FACTS

Respondent hereby adopts the statement of the case and facts as contained in petitioner's brief on the merits.

SUMMARY OF ARGUMENT

Respondent argues that the trial court did not err in imposing consecutive two-year terms of community control on petitioner because the two-year limitation on imposition of community control found in section 948.01(5), Florida Statutes, only sets the maximum permissible period of community control for any one offense and does not apply to multiple offenses at the same sentencing hearing. Petitioner was convicted of multiple offenses and thus the trial court had discretion to impose consecutive periods of community control.

ARGUMENT

ISSUE

WHETHER THE TRIAL COURT ERRED IN IMPOSING CONSECUTIVE TWO-YEAR TERMS OF COMMUNITY CONTROL ON THE 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.

Petitioner was sentenced to community control for two years in count I to run consecutive to the two years community control imposed in case number 88-113. On appeal petitioner argued that section 948.01(5), Florida Statutes, limited the imposition of community control to 24 months and that the court could not impose consecutive terms of community control of 24 months for each separate offense. The State argued that the 24-month limitation applied only to each offense and not to sentencing for multiple offenses. The First District Court of Appeal agreed with the State's position and affirmed the sentence but certified the following question of great public importance to this Court:

> "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?"

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 two years, whichever is less . . ." (emphasis added)

The decision of the First District Court of Appeal in the instant case is consistent with that court's earlier decision in Mick v. State, 506 So.2d 1121 (Fla. 1st DCA 1987). In Mick the defendant pled guilty to multiple offenses and was given 2 two-year community control sentences which were to run consecutively. Mick argued that this was an illegal sentence because of the two-year limitation contained in section 948.01(5). The court noted that it had previously held that community control was limited to two years when a defendant was sentenced for a single offense. Davis v. State, 461 So.2d 1003 (Fla. 1st DCA 1984). The court held that section 948.01(5), Florida Statutes, does not limit community control to two years when multiple offenses are involved:

> "The issue before us is whether Section 948.01(5), Florida Statutes (1985), limits 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 separate informations. Two years is the maximum permissible period of community control for any one offenses, Davis v. State, 461 So.2d 1003 (Fla. 1st DCA 1984), but we find nothing in the language of the statute that limits the duration of community control

> to a total of two years where sentences are imposed for multiple offenses charged in separate informations. The statute refers to the singular 'offense,' not to 'offenses.' On the facts of this case the two year limitation operates as a cap on the period of community control that may be imposed for each offense, not as a limitation on the total sentence.''

Id. at 1122.

A similar result was reached in Sanchez v. State, 538 So.2d 923 (Fla. 5th DCA 1989). In that case the court held:

> "The defendant also contends that the length of community control is restricted to two years .and therefore the trial court was without authority to impose consecutive terms of community control. We conclude that section 948.01(5), Florida Statutes (1988), does not 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 but rather, two years is the maximum permissible period of community control for any **one** offense. See Mick v. State, 506 So.2d 1121 (Fla. 1st DCA 1987)."

The decisions in Mick and Sanchez are clearly correct because section 948.01(5) refers to a two year limitation "for the offense" and does not address multiple offenses. Petitioner argues that under Rule 3.701(d)(13), Fla.R.Crim.P., the total sanction of community control "shall not exceed the term provided by general law.'' The sentence in the instant case does not exceed the term provided by general law since section 948.01(5), Florida Statutes, limits community control to two years for "the

offense." Petitioner was convicted of multiple offenses and therefore it was not error to impose consecutive two-year terms of community control.

Petitioner's reliance on Allen v. State, 526 So.2d 69 (Fla. 1988) is misplaced. In Allen the Court considered whether the six-year maximum for a youthful offender sentence in section 958.05, Florida Statutes (1979), would prohibit consecutive sentences which would result in a sentence in excess of the six-year limitation. The Court found that the six-year maximum could not be exceeded by consecutive sentences. The State had argued that since section 775.021(4) provides that a trial judge may order separate sentences to be served concurrently or consecutively that the sentence imposed was appropriate. Section 775.021(2), Florida Statutes, states that "the provisions of this chapter are applicable to offenses defined by other statutes, unless the code otherwise provides. The Court's decision was based upon the fact that the Youthful Offender Act expressly directs that its provisions should be applied in lieu of other penalties. Therefore section 775.021(4) which provides for separate consecutive sentences could not be read in para materia with the youthful offender statute which must be applied in lieu of all other penalties. Thus, the six-year limitation for youthful offender status found in section 958.05 must be literally applied. Unlike the Youthful Offender Act, sections 948.01(5) which provides for the imposition of

community control are not to be applied in lieu of all other criminal penalties. Therefore the rationale behind the Allen decision does not apply to the instant case and the trial court has the discretion to impose consecutive sentences for separate offenses pursuant to section 775.021(4), Florida Statutes.

There is simply no authority in the Florida Statutes or the Florida Rules of Criminal Procedure which limits the imposition of consecutive terms of community control for multiple offenses when the defendant is sentenced at the same sentencing hearing for multiple offenses charged in a single information. Section 948.01(5), Florida Statutes, clearly speaks in terms of a two-year limitation on community control for each separate offense. Therefore this Court should answer the certified question in the negative.

CONCLUSION

Based on the foregoing argument and citations of authority the certified question should be answered in the negative and petitioner's sentence should be affirmed.

Respectfully submitted,

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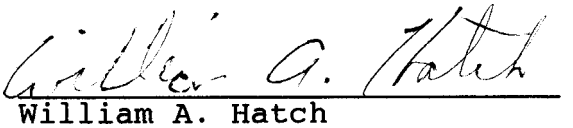
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing brief on the merits has been furnished by U.S. Mail to Paula S. Saunders, Assistant Public Defender, Leon County Courthouse, Fourth Floor, North, 301 South Monroe Street, Tallahassee, Florida 32301, this 29th day of May, 1990.



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