IN THE SUPREME COURT OF FLORIDA

JOHN DONAHUE CRAWFORD,

Petitioner,

v. CASE NO. 75,822

STATE OF FLORIDA,

Respondent.

_____/

PETITIONER'S REPLY BRIEF ON THE MERITS

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TABLE OF CONTENTS

TABLE OF CITATIONS

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I 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.**

Respondent contends in its brief that section **948.01(5),** Florida Statutes, only sets out the maximum permissible period of community control for any one offense and does not apply to sentencing for multiple offenses. This narrow reading of the statute is contrary to the clear legislative intent to limit the duration of community control supervision to a maximum of two years. Although the statute refers to "offense", not to "offenses," the statute further provides that the term of community control 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. When a court imposes sentences for multiple offenses at a single proceedi g, the total sanction cannot exceed the total guidelines sentence. Fla.R.Crim.P. **3.701(d)(12).** When the statute and guidelines rule are read in pari materia, it is clear that the duration of community control for one or multiple offenses cannot exceed two years. The courts in Mick v. State, 506 So.2d 1121 (Fla. 1st DCA 1987), and Sanchez v. State, 538 So.2d 923 (Fla. 5th DCA 1989), upon which respondent relies, failed to address the applicability of Florida Rules of Criminal Procedure 3.701 in their resolution of this issue.

Respondent contends that the consecutive terms of community control imposed here do not exceed the term provided by general law, as required by Florida Rule of Criminal Procedure **3.701(d)(13),** as section 948.01(5) limits community control to two years for each offense. **As** did the courts in Mick and Sanchez, respondent has failed to consider that one guidelines scoresheet must be prepared for all offenses pending before the court for sentencing, Fla.R.Crim.P. 3.701(d)(1), and that the total sanction cannot exceed the term provided by general law. Fla.R.Crim.P. **3.701(d)(12),(13).**

In Singleton v. State, 554 So.2d 1162 (Fla. 1990), this Court recognized the long-standing principle that appellate courts must give full effect to all statutory provisions and, where possible, harmonize related provisions with one another. The guidelines rules were adopted by the legislature in section 921.0015, Florida Statutes (1988). Accordingly, both Section

948.01(5) and Section 921.0015, implementing the sentencing guidelines, must be given full effect when an offender is sentenced at one time for multiple offenses. Singleton v. State, supra, at 1164.

Respondent attempts to distinguish Allen v. State, 526 So.2d 69 (Fla. 1988), on the basis that the Youthful Offender Act, Section 958.05, Florida Statutes (1979), expressly states that its provisions should be applied in lieu of other penalties, whereas Section 948.01(5) does not contain such language, thus consecutive sentences for separate offenses are permissible pursuant to Section 775.021(4), Florida Statutes. This distinction is illusory. In Allen, this Court held that allowing consecutive sentences in excess of the six-year cap established by the legislature

> would violate the express intent of the legislature to provide a 'sentencing alternative', see section 958.021, Florida Statutes (1985), that is more stringent than the juvenile system and less harsh than the adult system.. .. Clearly, the limitation on the time period for confinement is a primary benefit of the youthful offender alternative. Hence, imposition of consecutive sentences resulting in a total commitment of more than six years would thwart the purpose of the Act.
>
> * * *
>
> Accordingly, we hold that once a defendant has been classified a youthful offender, the court must adhere to the six-year cap established by the legislature. If trial courts wish to impose consecutive sentences 'for the protection of society', . . ., they properly may decline to classify a multiple offender as a youthful offender and sentence him or her as an adult.

526 So.2d at 70 - 71.

The rationale of Allen applies with equal force to the sentencing alternative of community control under Section 948.01, Florida Statutes. The legislature implemented community control as a more restrictive form of community supervision than probation and a less restrictive form of custody than prison. The twc-year cap on supervision is a primary benefit of the community control alternative. See Committee Note to Fla.R.Crim.P. **3.701(d)(13)** ("Community control is a viable alternative for any state prison sentence less than twenty-four (24) months without requiring a reason for departure."). If the court wishes to impose a longer period of supervision, the court can do so by imposing a term of imprisonment (consistent with the recommended guidelines range), followed by a period of probation not to exceed the maximum term provided by general law, See Committee Note to Fla.R.Crim.P. **3.701(d)(12),** or a term of community control (not to exceed two years) followed by a period of probation. See Skeens v. State, 556 So.2d 1113 (Fla. 1990); and Committee Note to Fla.R.Crim.P. **3.701(d)(13).** However, the court cannot impose consecutive terms of community control exceeding the two-year cap. To interpret the statute otherwise would violate the express intent of the legislature to provide a sentencing alternative to any state prison sentence less than twenty-four months.

In reaching it conclusion in Allen, this Court noted the analogous provisions in the Federal Youth Corrections Act and the Alabama Youthful Offender Act, and cited Ex Parte Johnson,

415 So.2d 1169 (Ala. 1982)(where statute establishes maximum probationary sentence of three years, defendant convicted simultaneously of two separate felonies and sentenced to three years probation in each must serve the probationary time concurrently rather than consecutive). It is noteworthy that Section 948.04(1), Florida Statutes, limits the duration of probation to two years "unless otherwise specified by the court," and provides that the two year limitation does not apply when a court imposes a split sentence pursuant to Section 948.01(8), Florida Statutes. Section 948.01(5) establishes a maximum term of community control, without the caveat "unless otherwise specified by the court," and without an exemption for split sentences. Davis v. State, 461 So.2d 1003 (Fla. 1st DCA 1984). Consequently, when a defendant is sentenced simultaneously for separate offenses to two years community control, the sentences must run concurrently.

Respondent concludes that there is simply no authority in the statutes or rules which limits the imposition of consecutive terms of community control for multiple offenses. Conversely, there is no' authority in either the statutes or rules which authorizes the imposition of consecutive terms of community control, and it is well settled that the statutory provisions in question must be strictly construed. See State v. Wershow, 343 So.2d 605, 608 (Fla. 1977), quoting, Ex Parte *Amos*, 95 Fla. 5, 112 So. 289 (1927):

> The statute being a criminal statue, the rule that it must be construed strictly applies. Nothing is to be regarded as in-

> cluded within it that is not within its letter as well as its spirit; nothing that is not clearly and intelligently described in its very words, as well as manifestly intended by the Legislature, is to be considered as included within its terms; and where there is such an ambiguity as to leave reasonable doubt of its meaning, where it admits of two constructions, that which operates in favor of liberty is to be taken.

This Court should answer the certified question in the affirmative and reverse petitioner's consecutive sentences.

II CONCLUSION

Based upon the foregoing argument, reasoning and citation of authority, as well as that in petitioner's brief on the merits, petitioner request that this Court vacate the decision of the lower court, reverse his consecutive sentences, and remand to the trial court for resentencing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Petitioner's Reply 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 petitioner, John D. Crawford, Post Office Box 145, Hampton, Florida, 32044, on this 14th day of June, 1990.

Paula S. Saunders
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