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FILED
SID J. WHITE
JUL 9 1992
CLERK, SUPREME COURT
By ________
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

JEROME RIVERS,

Petitioner,

vs. Case No. 80,141

STATE OF FLORIDA,

Respondent.

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

BRIEF OF PETITIONER ON JURISDICTION

JAMES MARION MOORMAN
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

JULIUS AULISIO
ASSISTANT PUBLIC DEFENDER
FLORIDA BAR NUMBER 0561304

Public Defender's Office
Polk County Courthouse
P. O. Box 9000--Drawer PD
Bartow, FL 33830
(813) 534-4200

ATTORNEYS FOR PETITIONER

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PRELIMINARY STATEMENT

Petitioner, Jerome Rivers, was the Appellant in the Second District Court of Appeal and the Defendant in the trial court. Respondent, the State of Florida, was the Appellee in the Second District Court of Appeal. The appendix to this brief contains a copy of the decision rendered by the Second District Court on June 26, 1992.

STATEMENT OF THE CASE AND FACTS

On May 24, 1989, the State Attorney for the Thirteenth Judicial Circuit, in and for Hillsborough County, Florida, filed a two count information in case number 89-8134, charging Petitioner, JEROME RIVERS, with delivery of cocaine in violation of Section 893.13(1)(a), Florida Statutes (1987), and possession of cocaine in violation of Section 893.13 (1)(f), Florida Statutes (1987). Count one allegedly occurred on April 4, 1989, and count two allegedly occurred on April 10, 1989. The State Attorney subsequently filed an information on July 5, 1989, in case number 89-11023, charging Appellant with possession of cocaine with intent to sell or deliver on June 6, 1989, in violation of Section 893.13(1)(a), Florida Statutes (1989). These two cases were consolidated for purposes of appeal.

In Case No. 89-8134, Petitioner entered a guilty plea and was sentenced to two years community control on July 19, 1989. Petitioner also entered a guilty plea in case number 89-11023, and on August 8, 1989 was placed on a concurrent term of two years community control. At this point Petitioner scored out to community control or 12-30 months in prison.

An affidavit for violation of community control was filed on April 4, 1990. On May 3, 1990, Rivers entered an admission to the violation. The trial court sentenced Rivers to 4 1/2 years prison on Count II of 89-8134. He then imposed concurrent 5 year terms of probation on Count I in 89-8134 and in 89-11023 which were to run consecutive to the 4 1/2 year prison term. On May 23, 1991, probation was violated and he was placed on concurrent terms of two years community control. Rivers was violated again, and on July 25, 1991, the court imposed concurrent sentences of 4 1/2 years prison followed by 3 years probation on Count I in 89-8134 and in 89-11023. Petitioner timely filed his notice of appeal on August 2, 1991. On appeal, Petitioner argued the sentencing violated the guidelines and he should have receive credit for time served on all counts when he was sentenced to prison. On June 26, 1992 The Second District Court of Appeal affirmed the lower court decision citing to State v. Tripp, 591 So.2d 1055, (Fla. 2d DCA 1991), rev. of certified question pending, Tripp v. State, No. 79,176 (Fla.).

SUMMARY OF THE ARGUMENT

Tripp v. State, NO. 79,176 (Fla.) is currently pending in the Florida Supreme Court. This Court should accept jurisdiction because the decision in Trim could favorably impact on the instant case.

ARGUMENT

The instant case was affirmed by the Second District Court of Appeal based on the authority of State v. Tripp, 591 So.2d 1055 (Fla. 2d DCA 1991). Review of the following certified question is pending in the Florida Supreme Court in Tripp v. State, No. 79,176 (Fla.):

> IF A TRIAL COURT IMPOSES A TERM OF PROBATION ON ONE OFFENSE CONSECUTIVE TO A SENTENCE OF INCARCERATION ON ANOTHER OFFENSE, CAN JAIL CREDIT FROM THE FIRST OFFENSE BE DENIED ON A SENTENCE IMPOSED AFTER A REVOCATION OF PROBATION ON THE SECOND OFFENSE?

This is essentially the same situation that was presented for review in the instant case. If this Court finds that the sentencing scheme in Tripp was improper it would impact favorably on Petitioner. This court should accept jurisdiction based on the similar issue in Tripp and reverse these sentencing schemes as they are simply a means of circumventing the guidelines. Jollie V. State, 405 So. 2d 418 (Fla. 1981).

CONCLUSION

This court should take jurisdiction based on the certified question currently pending in Tripp and reverse the decision of the Second District Court of Appeal.

APPEND1X

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED.

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

JEROME RIVERS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

CASE NO. 91-02588

Opinion filed June 26, 1992.

Appeal from the Circuit Court for Hillsborough County; Harry Lee Coe, 111, Judge.

James Marion Moorman, Public Defender, and Julius Aulisio, Assistant Public Defender, Bartow, for Appellant.

Robert A. Butterworth, Attorney General, Tallahassee, and Katherine V. Blanco, Assistant Attorney General, Tampa, for Appellee.

PER CURIAM.

Affirmed on the authority of State v. Tripp, 591 So.2d 1055 (Fla. 2d DCA 1991), rev. of certified question pending, Tripp v. State, No. 79,176 (Fla.).

SCHOONOVER, C.J., and DANAHY and CAMPBELL, JJ., Concur.

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CERTIFICATE OF SERVICE

I certify that a copy has been mailed to Katherine V. Blanco, Suite 700, 2002 N. Lois Ave., Tampa, FL 33607, (813) 873-4730, on this 7th day of July, 1992.

Respectfully submitted,

Julius Aulisio

JULIUS AULISIO
Assistant Public Defender
Florida Bar Number 0561304
P. O. Box 9000 - Drawer PD
Bartow, FL 33830

JAMES MARION MOORMAN
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT
(813) 534-4200

JA/lw