

FILED

SID J. WHITE

NOV 23 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

REPLY BRIEF OF PETITIONER ON THE MERITS

JAMES MARION MOORMAN
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

JULIUS AULISIO
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ATTORNEYS FOR PETITIONER

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ARGUMENT

ISSUE I

WHETHER THE TRIAL COURT ERRED BY USING A SPLIT SENTENCING SCHEME TO EXCEED THE GUIDELINES WHICH DENIED JAIL CREDIT FROM THE FIRST OFFENSE AFTER A REVOCATION OF PROBATION ON TWO OTHER OFFENSES.

Respondent argues that since Petitioner **did** not challenge the plea and probationary terms of the original sentence he can not challenge them now after a revocation of community control. Petitioner is not challenging the plea and probationary conditions, but rather the sentence that **was** imposed subsequent to the violation of probation. The error did not arise until after the sentence imposed subsequent to the violation of community control, because that is when Petitioners sentence exceeded the guidelines and became illegal.

The restriction to the type of sentence Petitioner received comes from the guidelines, To allow courts to impose prison on one case and probation or community control on other cases before the court under one guideline scoresheet, would render the guidelines meaningless. All of a defendant's cases that are pending for sentencing must be **scored** on one scoresheet. Parrish v. State, 527 So.2d 926 (Fla. 2d DCA 1988). Sentence must be imposed in conformity with the guidelines on all such **cases** unless written reasons are provided to exceed the guidelines. Richards v. State, 502 So.2d 1000 (Fla. 2d DCA 1987). The decision in Richards would be meaningless if a court is allowed to circumvent the guidelines by


imposing consecutive probations and revoking them one at a time to fashion an above the guidelines sentence without having to provide written reasons.

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 2nd day of November, 1992.

Respectfully submitted,

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