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AUG 28 1992

IN THE SUPREME COURT OF FLORIDA

CLERK, SUPREME COURT.

By _____
Chief Deputy Clerk

CASE NO. 80,203

JOAN LESLIE FOX,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

RESPONDENT'S ANSWER BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

Respondent was the **Appellant** in the Fourth District Court of Appeal and **F** in the Court of the Fifteenth Judicial Circuit, Criminal Division, in and for Palm Beach County, Florida. The Petitioner was the Appellee in the Fourth District Court of Appeal, and the Defendant in the Criminal Division of the Circuit Court of the Seventeenth Judicial Circuit, in and for Broward County, Florida.

In the brief, the parties will be referred to as they appear before the Supreme Court of Florida except that Respondent may also be referred to as the State.

The following symbols will be used:

"R" **Record** on Appeal.

All emphasis has been added unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

Respondent accepts the Statement of the Case and Facts
as given in Petitioner's Initial Brief.

SUMMARY OF THE ARGUMENT

This Court's holding in Scates v. State, 17 F.L.W. 467 (Fla. July 23, 1992) requires that the Fourth District affirm Petitioner's sentence.

A R G U M E N T

THE QUESTION CERTIFIED BY THE
FOURTH DISTRICT WAS DECIDED
IN SCATES v. STATE.

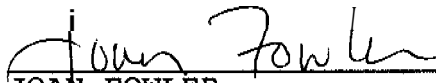
Below, the Fourth District Court of **Appeal** affirmed Petitioner's conviction but reversed the sentence and order of probation imposed. **The** court also certified the same question as in Scates v. State. **This** court recently decided Scates and held "that trial judges may refer a defendant convicted under section **893(1)(e)(1)** to a drug abuse program pursuant to Section **397.12** rather than impose a minimum three-year sentence." Scates v. State, 17 F.L.W. S467 (Fla. July 23, 1992). **This Court's** opinion in Scates is dispositive and requires that **the** Fourth District affirm the sentence and the order of probation imposed in the trial court.

CONCLUSION

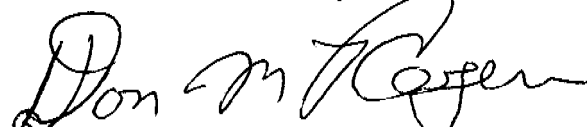
The **case** should be REMANDED to the Fourth District Court of Appeal with directions to fallow this Court's holding in Scates v. State.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Brief has been furnished by courier to: BARBARA WHITE, Assistant Public Defender, Fifteenth Judicial Circuit, counsel for Petitioner, 421 Third Street, West Palm Beach, Florida 33401, this 26th day of August, 1992.



Of Counsel

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