FILED
SID J. WHITE
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CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

MICHAEL ANTHONY DAVIS,

Petitioner,

v. FSC NO. 80,922

STATE OF FLORIDA,

Respondent.
_____/

# RESPONDENT'S BRIEF ON THE MERITS

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/bsh

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## SUMMARY OF THE ARGUMENT

The state interprets the sentencing alternatives outlined in Poore v. State, infra, as being per charge, not per charging instrument. This interpretation is supported by specific statutes in the Florida Criminal Code. There is nothing in the statutes or guidelines which limits a trial court's authority to impose a consecutive sentence of probation.

The length of prison sentences recommended under the guidelines has nothing to do with and does not control the length of probation chosen as an alternative to prison. Under the guidelines a trial court can impose probation terms consecutive to prison sentences limited in length only by general law. Under the principles of statutory construction it can be concluded that the legislature intended that trial judges have the discretion to impose a sentence of probation consecutive to a sentence of incarceration limited not by the guidelines but by general law. It can also be concluded the legislature intended for defendants to be subjected to the original guidelines sentence with the one cell bump for violation of probation. This is not improper because the greater sentence upon revocation of probation demonstrates a defendant's lack of amenability to reform.

That is why the result reached by the Second District in State v. Tripp, infra, is correct. The guidelines will control the sentence on revocation which will depend on the severity of

the offenses and the length and nature of the offender's criminal history. There is nothing in Lambert v. State, infra, or State v. Green, infra, which requires that credit be given for a previous incarcerative sentence upon revocation of probation. The instant case is similar to State v. Perko, infra, where the court held that the respondent was not entitled to credit for time served or gain time with reference to a new offense committed while on probation for grand theft auto.

Perko recognized that the state is not required to reward offenders for the length of their prison records. This court's opinion in Williams v. State, infra, provides guidance regarding the Second District's concern about abusive sentencing practices. The approval of the sentencing method in the instant case would not weaken or nullify the sentencing guidelines. In fact, State v. Green, infra, is inapplicable because the Petitioner was released pursuant to control release which does not fall within the mandate of Green.

The Petitioner's arguments fail to address the primary question in the case and are, at best, an attempt to cloud the issue. The result urged by the Petitioner would reward defendants for committing two offenses instead of one, for having a criminal history, and for failing to reform by violating probation. Judges would be unable to enforce probation. The state would be unable to monitor the behavior of violent felons or sexual deviates such as child molesters.

For the reasons cited by the Second District in Tripp, infra, in addition to the reasons set out by Respondent, it is respectfully requested that this court approve Tripp and affirm in the instant case.

## ARGUMENT

A TRIAL COURT WHICH IMPOSES A TERM OF PROBATION ON ONE OFFENSE CONSECUTIVE TO A TERM OF INCARCERATION ON ANOTHER OFFENSE CAN DENY CREDIT FOR TIME SERVED ON THE FIRST OFFENSE UPON REVOCATION OF THE PROBATION IMPOSED FOR THE SECOND OFFENSE BECAUSE THE SENTENCE IS LEGALLY SEPARATE IN THAT THE GUIDELINES ONLY CONTROL THE INCARCERATIVE PORTION OF THE SENTENCE AND TO GIVE CREDIT FROM THE FIRST OFFENSE WOULD REWARD CRIMINAL CONDUCT AND THE FAILURE TO REFORM.

The propriety of the sentencing method in the instant case is before the court for review pursuant to the question certified by the Second District Court of Appeal. The certified question was stated as follows:

> 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?

Davis v. State, 609 So. 2d 131 (Fla. 2d DCA 1992). That court affirmed the instant case on the authority of State v. Tripp, 591 So. 2d 1055 (Fla. 2d DCA 1991). The state's position is that Tripp and the instant case were decided correctly below so that affirmance is required.

The Second District submitted its certified question because the sentencing technique utilized in Tripp and the instant case was not expressly recognized in Poore v. State, 531 So. 2d 161 (Fla. 1988). The Second District was also concerned that the

manner of sentencing might conflict with the spirit of the sentencing guidelines and the limitations imposed in Lambert v. State, 545 So. 2d 838 (Fla. 1989) and State v. Green, 547 So. 2d 925 (Fla. 1989).

In Poore this court accepted jurisdiction to clarify the law regarding split sentences. It appears that the petitioner was only charged with committing one crime and the trial court imposed a "true split sentence." Justice Barkett, writing for the majority, recognized five basic sentencing alternatives in Florida: 1) a period of confinement; 2) A "true split sentence" consisting of a total period of confinement with a portion of the confinement period suspended and the defendant placed on probation for that suspended portion; 3) a "probationary split sentence" consisting of a period of confinement, none of which is suspended, followed by a period of probation; 4) A Villery sentence, consisting of a period of probation preceded by a period of confinement imposed as a special condition; and 5) straight probation. Poore, 531 So. 2d at 164.

Because the petitioner in Poore had received a "true split sentence" the court on revocation of probation could not impose new confinement exceeding the withheld or suspended portion of the original sentence. As Poore did not involve sentencing on a multi-count information as in the instant case, the state interprets the sentencing alternatives as being per charge, not per

charging instrument. That court recognized, however, that if a defendant violated his probation in alternatives 3, 4, and 5 section 948.06 (1), Florida Statutes (1989) and North Carolina v. Pearce, 395 U.S. 711, 89 S.Ct. 2072, 23 L.Ed.2d 656 (1969) permit the sentencing judge to impose any sentence he or she might originally have imposed with credit for time served and subject to the guidelines recommendation. Poore, 531 So. 2d at 164.

Section 921.187, Florida Statutes (1989) further enumerates the sentencing alternatives in Florida. The section authorizes the court to make any disposition authorized by law. Section 921.16, Florida Statutes (1989) gives the court the discretion to require that a defendant sentenced on two or more charges serve the sentences concurrently or consecutively. Unless the trial court is attempting to bring the sentence within the guidelines recommendation, it cannot impose consecutive sentences of incarceration absent a valid written reason for departure. Branam v. State, 554 So. 2d 512 (Fla. 1990).

However, the length of prison sentences recommended under the guidelines has nothing to do with, and does not control, the length of a probation sentence chosen as an alternative to prison. Petrillo v. State, 554 So. 2d 1227 (Fla. 2d DCA 1990). The committee note to Florida criminal procedure rule 3.701 (d)(12) provides:

> If a split sentence is imposed (i.e., a combination of state prison and probation

> supervision), the incarcerative portion imposed shall not be less than the minimum of the guideline range nor exceed the maximum of the range. The total sanction (incarceration and probation) shall not exceed the term provided by general law.

As the Petrillo court pointed out, in a case in which the probationary terms were concurrent but consecutive to a period of confinement, "... logic would dictate that if the court may, on a split sentence, impose an incarcerative sentence within the guideline range plus a probationary term which together do not exceed the term provided by law, it may also do so when sentencing for separate offenses at the same time." Id. at 1228.

The intent of the legislature in adopting the committee note to criminal procedure rule 3.701(d)(12) to allow the probationary portion of a defendant's sentence to be limited only by general law is to punish the multiple offender more severely than the offender who commits only one offense. As reason for the change the committee stated that "[t]his language will permit the sentencing court to impose probation terms consecutive to prison sentences, limited in length only by general law." The Florida Bar: Amendment to Rules of Criminal Procedure, 451 So. 2d 824 n. 13 (Fla. 1984).

In the area of statutory construction the legislature is presumed to know existing law when it enacts a statute, and is also presumed to be acquainted with judicial construction of former laws on the subject concerning which the latter statute is

enacted. Williams v. Jones, 326 So. 2d 425 (Fla. 1975), appeal dismissed, 429 U.S. 803 (1976); Adler-Built Industries, Inc. v. Metropolitan Dade County, 231 So. 2d 197 (Fla. 1970). It has long been established that upon revocation of probation the court may impose any sentence it might have originally imposed before placing the defendant on probation. Fla. Stat. §948.06 (1) (1989). See generally Franklin v. State, 545 So. 2d 851 (Fla. 1989); Poore v. State, 531 So. 2d 161 (Fla. 1988); State v. Holmes, 360 So. 2d 380 (Fla. 1978); Quincutti v. State, 540 So. 2d 900 (Fla. 3d DCA 1989); Ellis v. State, 406 So. 2d 76 (Fla. 2d DCA 1981); Hernandez v. State, 396 So. 2d 809 (Fla. 5th DCA 1981).

It can be concluded that the legislature intended that trial judges have the discretion to impose probation as part of a probationary split sentence or as a consecutive sentence to incarceration where there are two or more counts charged limited by general law depending on the degree of felony charged. See Fla. Stat. §775.082 (1989). A second conclusion is that upon revocation of probation the legislature intended that the defendant be subjected to the original guidelines sentence with the discretionary one cell bump for the probation violation. See Fla. Stat. §775.0841 (1989). This is not improper. When a greater sentence is imposed upon the revocation of probation, it can be based upon the defendant's subsequent conduct demonstrat-

ing his or her lack of amenability to reform. Williams v. Wainwright, 650 F. 2d 58, 61 (5th Cir. 1981). See also State v. Payne, 404 So. 2d 1055 (Fla. 1981); Scott v. State, 326 So. 2d 165 (Fla.), cert. denied, 429 U.S. 836 (1976).

It is precisely for this reason that the Second District decided Tripp correctly. The length of a defendant's sentence for violation of probation will depend on the severity of the convicted offenses and the circumstances surrounding the offenses; it will also depend on the length and nature of the offender's criminal history. Fla. R. Crim. P. 3.701 (b). If, for example, the defendant in Petrillo v. State, 554 So. 2d 1227 (Fla. 2d DCA 1990) violated his thirty year probationary period, he would only face incarceration in the cell above the previous 4 1/2 to 5 1/2 year guidelines recommendation.

The sentencing method in the instant case may well subject an offender who violates a consecutive sentence of probation on a separate charge to a longer period of incarceration than the original guidelines recommendation. However, such increased incarceration is warranted because by violating probation he or she has demonstrated a continuing criminal propensity. As the Fifth District observed in Ford v. State, 572 So. 2d 946,947 (Fla. 5th DCA 1990), the use of probation where a long history of continuing criminal activity exists should have acted as an incentive to comply with the conditions of probation, conditions which are not

any more of a burden than the conditions which law-abiding citizens "customarily and routinely" live with in their walks through life.

There is nothing in Lambert v. State, 545 So. 2d 838 (Fla. 1989) or State v. Green, 547 So. 2d 925 (Fla. 1989) which requires a trial court to give credit for time served on a previous incarcerative sentence when a legally consecutive sentence of probation is revoked. Lambert simply held that factors related to violations of probation or community control could not be used as grounds for departure because the legislature chose to punish violators by revocation and the one-cell bump up when sentencing for the original offense.

In Green this court held only that when sentencing for the violation of probation, the trial court must give the defendant credit for time served and gain-time accrued during any earlier imprisonment for the offense underlying the violation of probation, subject to possible gain-time forfeiture proceedings commenced in the sole discretion of DOC.[1] Id. at 926,927. Green is inapposite to the instant case because, here, the defendant

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[1]In 1989 the legislature amended section 948.06, Florida Statutes to provide that whenever probation, community control, or control release, including the probationary or community control portion of a split sentence, is violated, the offender, by reason of his misconduct, may be deemed to have forfeited all gain-time or commutation of time for good conduct, as provided by law, earned up to his release on probation, community control, or control release. The amendment became effective September 1, 1990. Fla. Stat. §948.06 n.2 (1989).

expects credit on violation of probation not for any gain time which accrued during an earlier imprisonment for the offense underlying the violation of probation, but for time served on a separate sentence of incarceration which was served before the consecutive sentence of probation on a separate charge began.

Although not directly on point, State v. Perko, 588 So. 2d 980 (Fla. 1991) is instructive as the Tripp court recognized. In Perko this court rephrased the certified question to read:

> When a defendant has violated probation by committing a new offense, must the sentence for that new offense include credit for time served and gain-time accumulated while the defendant was incarcerated for the earlier offense that underlay the order of probation?

Id. at 981. The court answered the question in the negative and quashed the Fourth District's opinion. The respondent committed a new offense while serving the probationary portion of a split sentence for grand theft auto. When sentencing for the new drug offense the Perko court held that the respondent was not entitled to credit for time served and gain time which accrued while he was imprisoned on the grand theft offense. The sentence for the drug offense was deemed a legally separate sentence. Id.

As in Perko, the Petitioner in the instant case seeks credit for time served and gain time on a previous incarcerative sentence which was separate from, and previous to, his consecutive sentence of probation. The Petitioner was on probation in case 90-14141 for burglary of a dwelling and grand theft. (R. 10,11,

13,15,16) He violated the initial probation by failing to file reports and by committing new offenses. (R. 22) On January 23, 1991 the Petitioner pled guilty to the charges of burglary of a structure and a petit theft. (R. 46-48) The trial court entered judgment for the violation of probation in case 90-14141 and the new offenses in case 90-19411. (R. 51,70)

In case 90-14141 the court sentenced the Petitioner to eighteen months imprisonment on count two (2) (grand theft). (R. 70) This was to be followed by three (3) years probation on count one (1) (burglary of a dwelling) and three (3) years probation in case 90-19411 (burglary of a structure). (Id.) The probationary sentences were to run concurrently. (Id.) On August 22, 1991 the Petitioner's probation was revoked. (R. 79) He was resentenced to 4 1/2 years incarceration on count one (1) (burglary of a dwelling) in case 90-14141 (R. 34) to be followed by a consecutive term of five (5) years probation on count (1) in case 90-19411 (burglary of a structure). (R. 79)

As Perko recognized, to give the Petitioner credit for time served and gain time earned during his eighteen month sentence for grand theft against his 4 1/2 year sentence for burglary of a dwelling would result in the Petitioner being rewarded with a reduced sentence solely because he had previously committed the grand theft. The state is not required to reward defendants for the length of their prison records. Id. at 982. Under the peti-

tioner's analysis trial court's could no longer enforce probation. Probationer's could terminate probation at will by violating it and serving either no time or minimal incarceration. See Niehenke v. State, 561 So. 2d 1218 (5th DCA 1990) (Sharp J., dissenting), disapproved, quashed, 594 So. 2d 273,289 (Fla. 1992)

This court's opinion in Williams v. State, 594 So. 2d 273 (Fla. 1992) provides guidance in regard to the Second District's concern about abusive sentencing practices. According to the court:

> It is entirely consistent to conclude that where there are multiple violations of probation, the sentence may be successively bumped to one higher cell for each violation. To hold otherwise might discourage judges from giving probationer's a second or even a third chance. Moreover, a defendant who has been given two or more chances to stay out of jail may logically expect to be penalized for failing to take advantage of the opportunity.

Id. at 275. Tripp is entirely consistent with Williams because a defendant who violates a consecutive sentence of probation within the limits provided by general law has shown a lack of reform and should expect to be penalized for failing to take advantage of the opportunity.

It is only after a defendant has repeatedly violated several different probations that he or she will be subject to successive revocations of probation and successive guidelines sentences. Considering the Tripp hypothetical in note three (3), when the

defendant violates all his probations by committing a new offense his new guidelines score will be bumped up one cell. The court can then revoke his probation on all counts and sentence him to the new guidelines sentence on each count concurrently (without credit for the time served on count one), or the court can revoke his probation as to only one count and give him a guidelines sentence on that count (without credit for the time served on count one) and reinstate his probation on the other counts.

In either case, a defendant will not have the problem as posed by the district court of a sentence "far beyond the permitted guidelines range if a defendant violated each of his probations" unless and until he repeatedly violates his probation. If the defendant again violates probation, the court may revoke any of the remaining probations and sentence the defendant to the guidelines with the bump for that count. It should also be recognized that the probations will be "capped" as provided by general law.

Contrary to Petitioner's arguments, the approval of the sentencing method in the instant case would not weaken or nullify the sentencing guidelines. As was pointed out, the guidelines apply to the incarcerative portion of a sentence. The legislature has specifically permitted the trial courts to impose probationary sentences consecutive to terms of incarceration with the probationary term limited only by general law. The legisla-

ture adopted this provision with full knowledge that on revocation of probation the trial court can impose any sentence which originally might have been imposed. The rationale is that by violating probation, which is a far less intrusion on liberty than incarceration, a defendant demonstrates the inability to cope with freedom responsibly thereby justifying a greater sentence on revocation of probation.

The Petitioner relies on State v. Green, 547 So. 2d 925 (Fla. 1989), arguing that by giving him credit only for time actually served, the trial court deprived him of gain time which is the "functional equivalent of time spent in prison." However, according to DOC the Petitioner was released from his eighteen month sentence in case 90-14141 due to "control release" by the direction of the Florida Parole Commission under section 947.146, Florida Statutes. (See Appendix)

In Green, when this court determined that "accrued gain time is the functional equivalent of time spent in prison," it relied heavily on the fact that section 944.275(1), Florida Statutes, authorizes DOC to grant "`gain-time in order to encourage satisfactory prisoner behavior, to provide incentive for prisoners to participate in productive activities, and to reward prisoners who perform outstanding deeds or services'" and that "receipt of gain-time is dependent on a prisoner's behavior while in prison, not on satisfactory behavior once the prisoner has been released from incarceration." Id. at 926.

In contrast, early release awards have an entirely different purpose, i.e. the control of prison overcrowding, and are not designed as a management tool directed to encouraging satisfactory prisoner behavior and enhancing productiveness. Compare Weaver v. Graham, 450 U.S. 24 (1981); Raske v. Martinez, 876 F. 2d 1496 (11th Cir.), cert. denied, 493 U.S. 993 (1989); Waldrup v. Dugger, 562 So. 2d 687 (Fla. 1990) with Dugger v. Rodrick, 584 So. 2d 2 (Fla. 1991), cert. denied, --U.S.--, 112 S. Ct. 886, 116 L.Ed.2d 790 (1992) and Blankenship v. Dugger, 521 So. 2d 1097 (Fla. 1988). The trial court was correct in giving the Petitioner credit only for actual time served because control release is not the functional equivalent of time served. Control release does not fall within the mandate of Green and that conclusion is supported by this court's decisions in Rodrick and Blankenship.

The sentencing method in the instant case does not permit retroactive forfeiture of gain time. It simply disallows credit for time not served when a separate, consecutive sentence of probation is revoked. Petitioner argues that "vague and uncertain" statutes should be interpreted to favor the accused but fails to state which statutes are vague and uncertain. The state previously has pointed out that the legislature has given judges the express authority to impose a term of probation consecutive to a sentence of incarceration. That power, undoubtedly, does exist. Tripp would not cause judicial chaos because the sentenc-

ing guidelines limit judicial discretion when resentencing on violation of probation.

The question in the instant case is not whether the legislature delegated or failed to delegate the power to grant or deny gain time; the question is whether the court must grant credit for time served and gain time from an incarcerative sentence preceding the revocation of a separate, consecutive sentence of probation. As Tripp points out the majority of district courts have found the separate consecutive sentence of probation to be legally separate from the initial sentence of incarceration so a defendant is not entitled to credit for time served for the first offense on revocation of probation for the second offense.

Trial judges are not left with undue discretion as the Petitioner argues. Defendants serving a split sentence will still get credit for time served and gain time for any incarceration underlying the violation of probation. Tripp does not extend the possible punishment more than the statutes reasonably justify. Tripp simply gives probationers a very strong incentive not to violate the terms and conditions of probation. It does not imagine a legislative intent that does not exist because the legislature specifically adopted the guidelines provision allowing trial judges to impose a consecutive term of probation within the limits of general law. This court should focus on the separate sentences at issue and not on the Petitioner's specious

arguments concerning gain time. The rule of lenity is not even applicable because there is no ambiguity in the statutes allowing a consecutive sentence of probation.

There are no restrictions on a trial court's authority to impose a term of probation consecutive to a term of incarceration. It is not the province of the judiciary to create one. The result urged by the Petitioner would reward defendant's for committing two offenses instead of one, for having a criminal history, and for failing to reform by violating their probation. Judges would not be able to enforce probation because upon revocation defendants would serve little or no time incarcerated. The state would be unable to monitor the behavior of violent felons or sexual deviates such as child molesters. Consecutive probation makes sense because it is a minimal intrusion upon liberty compared with incarceration and it guards the public by supervising those who, through committing crimes against persons or property, have shown themselves to be a threat in their past history. The supervision will be limited by general law depending on the degree of felony underlying the sentence of probation.

The sentencing in Poore v. State, 531 So. 2d 161 (Fla. 1988) is in no way similar to the instant case. Poore recognized as does the state that the guidelines control incarceration after revocation of probation. However, in a case like the instant case, the sentence is not a split sentence and the defendant is

not entitled to credit for time served when he has not served any time on his consecutive sentence of probation. Daniels v. State, 491 So. 2d 543 (Fla. 1986) only required that a defendant in jail for a new crime that also resulted in a violation of probation must receive credit for all time spent in that jail against the sentence for the new crime as well as the sentence for the violation of probation. Id. at 544-45.

Yet, as State v. Perko, 588 So. 2d 980 (Fla. 1991) recognized, its facts, and the facts of the instant case are vastly dissimilar from those of Green and Daniels. The lower court's decision is supported by Perko. In addition, the Second, Fourth, and Fifth Districts have ruled that the sentencing method in the instant case produces two separate sentences so that a defendant in this situation is not entitled to jail credit from the first sentence concerning any revocation of probation for the second offense.

Finally, in addition to the reasons in the opinions cited by the Tripp court, its decision is supported by the rules relating to jail credit for presentence imprisonment when a defendant receives consecutive sentences of imprisonment. Accordingly, the state respectfully requests that the Honorable Court answer the certified question in the affirmative and approve the lower court's decisions in Tripp and the instant case.

## CONCLUSION

For all the reasons cited by the Second District's Tripp opinion and the cases cited therein, in addition to the reasons set forth by Respondent, this Honorable Court is respectfully requested to approve the District Court opinion and answer the certified question in the affirmative.

Respectfully submitted,

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**COUNSEL FOR RESPONDENT**

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Brad Permar, Esq., Assistant Public Defender, Criminal Court Complex, 5100-144th Avenue North, Clearwater, Florida 34620 on this 9th day of March 1993.

OF COUNSEL FOR RESPONDENT

IN THE SUPREME COURT OF FLORIDA

MICHAEL ANTHONY DAVIS,

Petitioner,

v. FSC No. 80,922

STATE OF FLORIDA,

Respondent.

_____/

# RESPONDENT'S BRIEF ON THE MERITS

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## APPENDIX

DEPARTMENT OF CORRECTIONS AFFIDAVIT

FLORIDA
DEPARTMENT of
CORRECTIONS

Governor
LAWTON CHILES
Secretary
HARRY K. SINGLETARY, JR.

2601 Blair Stone Road • Tallahassee, Florida 32399-2500 • (904) 488-5021

A F F I D A V I T

COUNTY OF LEON

Personally appeared before me this day Bobbie Glover, who being duly sworn deposes and says that:

She is the Bureau Chief of Admission and Release of the Department of Corrections and as such Bureau Chief she is the official custodian of all inmate records pertaining thereto:

Michael Anthony Davis, DC #475567, was received by the Florida Department of Corrections on February 22, 1991, having been sentenced in the Circuit Court of Hillsborough County on January 23, 1991, for the following:

Case Number: 90-14141, Two Counts
Term: Count One - Three (3) years probation concurrent with 90-19411 but consecutive to the term imposed as to count two.
Count Two - Eighteen (18) months less 65 days credit for time served prior to sentencing.
Offense: Count One - Burglary of a Dwelling
Count Two - Grand Theft Third Degree

On April 23, 1991, inmate Davis was released from the Department's custody, having only served 90 days, by order of the Florida Parole Commission's Control Release Authority to the period of probation supervision imposed in count one. On the date that inmate Davis was control released, he would not have been eligible for release due to application of basic and incentive gaintime until November 8, 1991.

On September 5, 1991, inmate Davis returned to the Department's custody having been sentenced in the Circuit Court of Hillsborough County on August 22, 1991, for the following:

Case Number: 90-14141
Term: Count One - Four and one-half (4 1/2) years less 105 days credit for time served prior to sentencing.
Offense: Burglary of a Dwelling

A F F I D A V I T -2- March 3, 1993

RE: Michael Anthony Davis, DC #475567

On February 11, 1992, inmate Davis was released from the Department's custody by order of the Florida Parole Commission's Control Release Authority to a period of probation supervision in case number 90-19411, which was subsequently revoked and resentenced to another term of probation supervision concurrent with case 92-12208 on January 15, 1993, due to the felony conviction in case 92-12208, according to the Department's automated probation record.

On February 23, 1992, inmate Davis was again received by the Department having been sentenced in the Circuit Court of Hillsborough County on January 15, 1993, for the following:

Case Number: 92-12208
Term: Seven (7) years less 135 days credit for time served prior to sentencing followed by a period of three (3) years drug offender probation. The Court further adjudged the defendant a habitual offender in accordance with F.S. 775.084(4)(a).
Offense: Burglary of a Dwelling

The facts stated in the foregoing affidavit are based on information contained in the official files of the Department of Corrections.

Bobbie Glover

Bobbie Glover, Bureau Chief
Admission and Release Authority
Department of Corrections

Sworn and Subscribed before me this 3rd day of March, A.D. 1993, by Bobbie Glover who is personally known to me.

Vonda K. Hancock

Notary Public

VONDA K. HANCOCK
MY COMMISSION # CC 248361 EXPIRES
December 27, 1996
BONDED THRU TROY FAIN INSURANCE, INC.