

097

FILED
SID J. WHITE 5/3
APR 6 1993

IN THE SUPREME COURT OF FLORIDA

CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

PAUL R. COOK,	:	
	:	
Petitioner,	:	
	:	
v.	:	CASE NO. 81,098
	:	
STATE OF FLORIDA,	:	
	:	
Respondent.	:	

PETITIONER'S BRIEF ON MERITS

NANCY A. DANIELS
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

GLENNA JOYCE REEVES
ASSISTANT PUBLIC DEFENDER
FLORIDA BAR NO. 231061
LEON COUNTY COURTHOUSE
SUITE 401
301 SOUTH MONROE STREET
TALLAHASSEE, FLORIDA 32301
(904) 488-2458

ATTORNEY FOR PETITIONER

TABLE OF CONTENTS

	<u>PAGE(S)</u>
TABLE OF CONTENTS	i
TABLE OF CITATIONS	i
PRELIMINARY STATEMENT	1
STATEMENT OF THE CASE	2
SUMMARY OF THE ARGUMENT	4
ARGUMENT	
<u>ISSUE PRESENTED</u>	
IF A TRIAL COURT IMPOSES A TERM OF PROBATION CONSECUTIVE TO A SENTENCE OF INCARCERATION ON ANOTHER OFFENSE, CAN JAIL CREDIT FROM THE FIRST OFFENSE BE DENIED ON A SENTENCE IMPOSED AFTER THE REVOCATION OF PROBATION ON THE SECOND OFFENSE?	5
CONCLUSION	6
CERTIFICATE OF SERVICE	6

TABLE OF CITATIONS

<u>CASE</u>	<u>PAGE(S)</u>
<u>State v. Tripp</u> , 591 So. 2d 1055 (Fla. 2d DCA 1991), <u>rev. pending</u> , Case No. 79,176 (Fla.)	3
<u>Tripp v. State</u> , Case No. 79,176 (Fla. March 25, 1993)	4,5,6

IN THE SUPREME COURT OF FLORIDA

PAUL R. COOK,

Petitioner,

v.

CASE NO. 81,098

STATE OF FLORIDA,

Respondent.

_____ /

PETITIONER'S BRIEF ON THE MERITS

PRELIMINARY STATEMENT

Petitioner, as referred to in this brief, was the defendant in the trial court and appellant below. Respondent, the State of Florida, was the prosecuting authority.

The record on appeal consists of the record proper which will be referred to as "R"; the sentencing hearing January 18, 1990, which will be referred to as "S"; the violation of probation hearing held November 22, 1991, which will be referred to as "V" and the sentencing hearing held on December 5, 1991, which will be referred to as "T". The supplemental record on appeal will be referred to as "SR".

STATEMENT OF THE CASE AND FACTS

In Case No. 89-1086, petitioner pleaded to Counts II, III and V, passing a worthless bank check, grand theft, and forgery (R-1-2, 15-16). In Case No. 89-1676, petitioner pleaded no contest to passing a worthless bank check (R-52,54-56). In Case No. 89-2402, petitioner pleaded no contest to passing a worthless bank check (R-76,79-81). He was sentenced on these offenses on June 5, 1989, to three years probation on each case and each count, to run concurrently (R-15-16, 54-56, 79-81). Thereafter, petitioner pleaded to one count of credit card fraud (89-4068) and to two counts of forgery and one count of grand theft (89-5033), as well as violations of probation in Case Nos. 89-1086, 89-1676, and 89-2402. At the sentencing hearing January 18, 1990, petitioner was sentenced within the permitted range of the guidelines to 4 1/2 years Department of Corrections on Case Nos. 89-4068 and 89-5033 (S-12-13, SR-2-5, 7). On Case Nos. 89-1086, 89-1676, and 89-2402, petitioner's probation was revoked and he was placed on probation for a period of three years to run consecutive to the Department of Corrections' sentences (R-22-27, 63-65, 85-88; S-13-14).

At a violation of probation hearing November 22, 1991, it was found that petitioner had violated the conditions of his probation in 89-1676, 89-1086, and 89-2402 (V-24). The trial judge sentenced him to 3 1/2 years in the the Department of Corrections (T-12; R-34-38, 71-74, 93-96). Petitioner's request that he be given credit for the 4 1/2 year prison term he had previously served was denied (T-4-11).

Notice of Appeal was timely filed (R-98).

Citing State v. Tripp, 591 So. 2d 1055 (Fla. 2d DCA 1991), rev. pending, Case No. 79,176 (Fla.), the First District Court of Appeal denied petitioner's request that he be given such jail time credit.

By order dated March 31, 1993, this Court accepted jurisdiction in the cause.

SUMMARY OF THE ARGUMENT

Tripp v. State, Case No. 79,176 (Fla. March 25, 1993)
mandates that petitioner receive credit for time served in Case
Nos. 89-4068 and 89-5033.

ARGUMENT

ISSUE PRESENTED

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


This question has been answered in the negative in Tripp v. State, Case No. 79,176 (Fla. March 25, 1993). This Court held therein that if a trial court imposes a term of probation on one offense consecutive to a sentence of incarceration on another offense, credit for time served on the first offense must be awarded on the sentence imposed after revocation of probation on the second offense. (Slip Op at 5). Under Tripp, petitioner was entitled to credit for time previously served on Case Nos. 89-4068 and 89-5033 when his probation was revoked in Case Nos. 89-1676, 89-1086, and 89-2402. The decision of the First District Court of Appeal should be reversed and the cause remanded to the trial court for proper award of credit for time previously served.

CONCLUSION

Based upon Tripp v. State, petitioner is entitled to credit for time previously served in Case Nos. 89-4068 and 89-5033.

Respectfully submitted,

NANCY A. DANIELS
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT


GLENNA JOYCE REEVES
Assistant Public Defender
Florida Bar No. 231061
Leon County Courthouse
Suite 401
301 South Monroe Street
Tallahassee, Florida 32301
(904) 488-2458

ATTORNEY FOR APPELLANT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by delivery to Ms. Wendy Morris, Assistant Attorney General, The Capitol, Plaza Level, Tallahassee, Florida, and a copy has been mailed to petitioner, on this 6th day of April, 1993.


GLENNA JOYCE REEVES