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IN THE SUPREME COURT OF FLORIDA

FILED

SID J. WHITE

APR 30 1975

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

PAUL R. COOK, :

Petitioner, :

v. :

CASE NO. 81,098

STATE OF FLORIDA, :

Respondent. :

_____ /

PETITIONER'S REPLY BRIEF ON THE MERITS

NANCY A. DANIELS
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

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ATTORNEY FOR PETITIONER

TABLE OF CONTENTS

	<u>PAGE(S)</u>
TABLE OF CONTENTS	i
TABLE OF CITATIONS	i
PRELIMINARY STATEMENT	1
ARGUMENT	
<u>ISSUE</u>	
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?	2
CONCLUSION	3
CERTIFICATE OF SERVICE	3
APPENDIX	

TABLE OF CITATIONS

<u>CASE</u>	<u>PAGE(S)</u>
<u>Tripp v. State</u> , Case No. 79,176 (Fla. March 25, 1993)	2,3

IN THE SUPREME COURT OF FLORIDA

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

PETITIONER'S REPLY BRIEF ON THE MERITS

PRELIMINARY STATEMENT

Respondent's brief will be referred to as "RB". Other references will be as set forth initially.

ARGUMENT

ISSUE

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?

Respondent agrees that this case is controlled by Tripp v. State, Case No. 79,176 (Fla. March 25, 1993) and should therefore be reversed and remanded.

Respondent inaccurately asserts, however, that the sentences of 3 1/2 years imposed on the violations of probation in Case Numbers 89-1676, 89-1086, and 89-2402 constitute an illegal downward departure. (RB-5-6). The guidelines scoresheet for these cases are not included in the record on appeal so the State can not demonstrate that there has been a departure. If the State is correct in utilizing the scoresheet for Case Numbers 89-4068 and 89-5033, then the claim that the sentence is an underdeparture ignores that petitioner was previously sentenced to 4 1/2 years on these charges. The combined sentence is therefore 8 years, a sentence within the guidelines. [Bump-ups for violations of probation are permissible, not mandatory.]

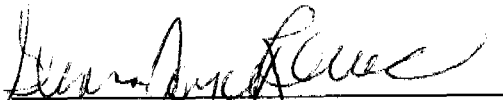
The cause should be remanded therefore only for the proper award of jail time credit.

CONCLUSION

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

Respectfully submitted,

NANCY A. DANIELS
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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 appellant, on this 30th day of April, 1993.


GLENN A JOYCE REEVES

IN THE SUPREME COURT OF FLORIDA

PAUL R. COOK,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

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CASE NO. 81,098

A P P E N D I X

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

PAUL R. COOK,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

* NOT FINAL UNTIL TIME EXPIRES
* TO FILE MOTION FOR REHEARING AND
* DISPOSITION THEREOF IF FILED.

* CASE NO. 92-54.

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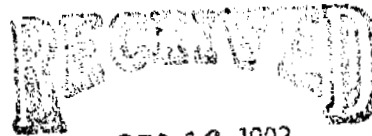
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Opinion filed December 16, 1992.

Appeal from the Circuit Court for Leon County.
Judge William Gary.

Nancy A. Daniels, Public Defender, and Glenna Joyce Reeves,
Assistant Public Defender, Tallahassee, for appellant.

Robert A. Butterworth, Attorney General, and Wendy S. Morris,
Assistant Attorney General, Tallahassee, for appellee.



DEC 16 1992

PUBLIC DEFENDER
2nd JUDICIAL CIRCUIT

PER CURIAM.

AFFIRMED. State v. Tripp, 591 So.2d 1055 (Fla. 2d DCA 1991), rev. pending, Case No. 79,176 (Fla.); State v. Rogers, 540 So.2d 872 (Fla. 4th DCA 1989); Ford v. State, 572 So.2d 946 (Fla. 5th DCA 1990).

BOOTH, BARFIELD, and MINER, JJ., CONCUR.