

045  
IN THE SUPREME COURT OF FLORIDA

**FILED**

SID J. WHITE

OCT 20 1993

CLERK, SUPREME COURT

By *[Signature]*  
Chief Deputy Clerk

ANTHONY ROBERTS,

Petitioner,

v.

CASE NO. 81,182

STATE OF FLORIDA,

DCA CASE NO. 92-373

Respondent.

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ON PETITION FOR DISCRETIONARY REVIEW

SUPPLEMENTAL BRIEF OF RESPONDENT

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SUMMARY OF ARGUMENT

The District Court below properly upheld the use of the new sentencing scoresheet when the defendant violated his probation by committing a criminal act.

## ARGUMENT

THE TRIAL COURT PROPERLY USED A NEW  
SCORESHEET WHEN SENTENCING THE  
DEFENDANT FOR REVOCATION OF  
PROBATION AND THE UNDERLYING  
SUBSTANTIVE OFFENSE.

Pursuant to Tito v. State, 616 So. 2d 39 (Fla. 1993), if violation of probation occurs with other substantive offenses, the original scoresheet need not be used. Rather, multiple scoresheets are to be prepared to determine the most severe sanction. Id. at 40. The Tito court does not draw a distinction between misdemeanors and felonies. As a result, even though the instant underlying offense was a misdemeanor, the requirement to formulate a new scoresheet and use the one providing the most severe sanction remains unchanged.

Tito clarifies the concept that when a defendant violates probation by committing a criminal act, he is not being resentenced for "precisely the same conduct," and double jeopardy is not a concern. State v. Payne, 404 So. 2d 1055, 1058 (Fla. 1981). The decision of the district court below is correct and should be affirmed. Scherwitz v. State, 618 So. 2d 793 (Fla. 5th DCA 1993).

CONCLUSION

Based on the aforestated points and legal authorities, the Respondent, THE STATE OF FLORIDA, respectfully requests this court to affirm the decision of the appellate court below.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing SUPPLEMENTAL BRIEF has been furnished by U. S. Mail to Louis Campbell, Assistant Public Defender, Eleventh Judicial Circuit of Florida, 1320 N. W. 14th St., Miami, FL 33125, on this 18<sup>th</sup> day of October, 1993.



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