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**FILED**

SID J. WHITE

JUL 21 1993

CLERK, SUPREME COURT

By \_\_\_\_\_  
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

L. C. BRADLEY,

Petitioner,

v.

CASE NO. 81,672

STATE OF FLORIDA,

Respondent.

\_\_\_\_\_ /

DISCRETIONARY REVIEW OF DECISION OF THE  
DISTRICT COURT OF APPEAL OF FLORIDA  
SECOND DISTRICT

ANSWER BRIEF OF RESPONDENT ON THE MERITS

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SUMMARY OF THE ARGUMENT

Appellant is mistaken as to the effective date of the amendment to §948.06(6) which provides for the forfeiture of all gain time previously earned upon revocation of probation. Appellant asserts that the effective is September 1, 1990; however, it is the State's position that forfeitures for revocation of probation under §948.06(6) became effective for all offenses on or after October 1, 1989. Since Appellant committed his offense on December 15 and December 20, 1989, the forfeiture provision applies, and the trial court exacted the forfeiture in accordance with the statutory authority invested in it by §9.48.06(6), Florida Statutes (1989).

ARGUMENT

ISSUE I

WHETHER UPON REVOCATION OF PROBATION THE  
TRIAL COURT PROPERLY DENIED THE APPELLANT'S  
GAIN TIME PREVIOUSLY EARNED.

Appellant is mistaken as to the effective date of the amendment to §944.28(1) which provides for the forfeiture of all gain time previously earned upon revocation upon revocation of probation. Appellant asserts that the effective date is September 1, 1990; however, it is the State's position that forfeitures for revocation of probation under §948.06(6) became effective for all offenses committed on or after October 1, 1989. Since Appellant committed his offense in December of 1989, and the trial court exacted the forfeiture in accordance with the statutory authority invested in it by its §948.106(6), Florida Statutes (1989).

Appellant's argument is premised on his erroneous belief that the effective date of the amendments to §948.06(6) authorizing forfeiture of gain time for revocations of probation and community control is September 1, 1990. On the contrary, the amendment authorizing the forfeiture of gain time upon revocation of probation or community control became effective for offenses committed on or after October 1, 1989. See Ch. 89-531, §13, §19, §20, Laws of Florida. The effective date of September 1, 1990, applies only to the additional provision which authorizes forfeitures for revocation of control release supervision. See

Ch. 89-526, §8, §52, Laws of Florida. The State believes the confusion arose because of the enactment of two (2) separate bills during the 1989 special legislative session both of which amended §948.06(6), but each for different reasons and with different effective dates.

In response to the decision, in State v. Green, 547 So. 2d 925 (Fla. 1989), the Florida Legislature proposed legislation during the regular session in 1989, to allow for the forfeiture of all gain time while earned in prison on a probationary split term, upon revocation of the probation (or community control) and return to custody. See Ch. 89-531, §13, §19, §20, Laws of Florida.<sup>1</sup> Although this legislation was vetoed at the close of regular session, the amendments to §948.06(6) were again represented at the special legislative session which followed.<sup>2</sup> These amendments<sup>3</sup> were effective for all offenses committed on

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<sup>1</sup> Exhibits will be listed as Exhibits A through G.

<sup>2</sup> Exhibit C is a copy of the staff analysis and economic impact statement for House Bill 300 which was proposed in the regular session of 1989. this bill was later vetoed by the Governor at the close of the regular session. The amendments to Section 948.06(6) contained in House Bill 300 (and the companion Senate Bill 728) were reserected during the special legislative session which followed the regular session, as Senate Bill 12-B. SB 12-B passed during the special legislative session and was signed into law on June 28, 1989. (See Exhibit D) Those amendments are contained in Chapter 89-531, Laws of Florida.

<sup>3</sup> The amending language contained in Ch. 89-531, §6, Laws of Florida, provided as follows:

944.28 Forfeiture of gain-time and the right to earn gain-time in the future.--

(1) If a prisoner is convicted of escape, or if

or after October 1, 1989. Ch. 89-531, §19, Laws of Florida; Exhibit E.

During the same special legislative session, the Florida legislature enacted a new early release mechanism to control prison overcrowding. This new mechanism, called control release, authorizes the Florida Patrol Commission, sitting as the control release authority, to control the prison population. See Ch.89-526, §1 - 9, Laws of Florida, now codified at §947.146, Florida Statutes. Because the control release mechanism authorized the Commission (authority) to establish periods of supervision to follow control release, the legislature proposed an additional amendment to §944.28(1) to allow for the forfeiture of all of gain time earned up to the date of revocation of control release. This additional amendment <sup>4</sup> was specified to become effective on

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the clemency, conditional release as described in Ch. 947, probation or community control as described in §948.01, provisional release as described in §944.277, or parole granted to him is revoked, the department may, without notice or hearing, declare a forfeiture of all gain-time earned according to the provisions of law by such prisoner prior to such escape or his release under such clemency, conditional release, probation or community control, provisional release, or parole.

Exhibit E.

<sup>4</sup> The amending language of Ch. 89-526, §6, Laws of Fla., provided as follows:

944.28 Forfeiture of gain-time and the right to earn gain-time in the future.--

(1) If a prisoner is convicted of escape, or if the clemency, conditional release as described in Ch. 947, probation or community control as

September 1, 1990, as that was the date the entire control release statute was to become effective. See Ch. 89-526, §52, Laws of Florida; Exhibit F. The remainder of the amendments contained in Ch. 89-526 became effective October 1, 1989. Like Ch. 89-531, Ch. 89-526 was signed into law and filed with the Secretary of State's Office on June 28, 1989. Exhibit G.

Based upon the State's understanding of these two bills and the effective dates established by the legislature, the State considers the forfeiture provisions enacted into law under Ch. 89-531--that is, those forfeitures which are authorized are authorized for revocation of probation, community control and provisional release--to be effective for all offenses committed on or after October 1, 1989; and the additional forfeiture provisions enacted into law under Ch. 89-526--that is the forfeiture which is authorized for revocation of control release--to be effective on September 1, 1990, the effective date for control release. Exhibit H.

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described in §948.01, provisional release as described in §944.277, or parole, or control release as described in §947.146 granted to him is revoked, the department may, without notice or hearing, declare a forfeiture of all gain-time earned according to the provisions of law by such prisoner prior to such escape or his release under such clemency, conditional release, probation or community control, provisional release, control release, or parole.

Exhibit F.



The State's position is supported by both §1.04, Florida Statutes, which provides a rule for statutory construction of amendatory acts passed during the same session in case law construing that provision.

§ 1.04 provides:

Acts passed during the same legislative session and amending the same statutory provisions are in pari materia and full effect should be given to each, if that is possible. Language carried forward unchanged in one amendatory act, pursuant to Section 6, Article 3, of the State Constitution, should not be read as conflicting with changed language contained in another act passing during the same session. Amendments enacted during the same session are in conflict with each other only to the extent that they cannot be given effect simultaneously.

In order to give full effects to both amendatory acts and apply the appropriate effective dates, the purpose of each act and the amending language must viewed in pari materia. It is obvious that the legislature intended to counteract the effect of the Green decision as it pertains to revocations of probation and community control, and that legislature intended that those amendments be given prompt effect, since the effective date which appears in Ch. 89-531 is October 1, 1989. It is also clear that the amendments and provisions contained in §1-9 of Ch. 89-526 were solely related to the establishment of a new early release mechanism, control release, which, because of its nature would require some lead time for implementation. Thus, the effective date for "control release" was established at the future date of

September 1, 1990. Because new language was already being proposed for forfeitures upon revocation of probation, community control, and provisional release. For other reasons, it was proper to include these additional amendatory provisions within the text of the proposed amendment in Ch. 89-526; however there can be no doubts that the focus of the first nine provisions of Ch. 89-526 were related solely to control release. Thus, the later effective date of September 1, 1990, should only be applied to additional amendatory language pertaining to revocation of control release. See, e.g., Gunito Works, Inc. v. Lovett, 392 So. 2d 910 (Fla. 1st DCA 1980) (We must assume that the act of the legislature in changing the effective date of some provisions of the Worker's Compensation law and then failing to change the effective date for other provisions expressed the legislature's intent that the latter provisions take effect on the date initially designated.).

That the amendments to §948.06(6), Florida Statutes, contained in Ch. 89-531, were to be effective for all offenses committed on or after October 1, 1989, it is also evidenced by the note which follows § 948.06 in the 1989 Statutes, which reads;

As created by Section 13, Chapter 89-531, Section 8, Chapter 89-526, also created Subsection (6) which will amend this version, effective September 1, 1990 to read;

(6) Any provision of the law to the contrary notwithstanding, whenever probation, community control, or control release, including the probationary, community control

portion of a split-sentence, is violated in the probationer, community control is revoked, 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 the date of his release on probation, community control, or control release. This subsection does not deprive the prisoner of his right to gain-time or his commutation of time for good conduct, as provided by law from the date on which his return to prison.

Since the amendments to §948.06 contained in Ch. 89-531 appeared in the 1989 Statutes, there can be no doubt under Ch. 89-531 that the effective date is October 1, 1989. There should also be no doubt that the September 1, 1990 effective date for the additional amendment to §948.06(6) under Ch. 89-526 is limited to that additional amendment which brought in revocation of control release supervision as the basis for automatic forfeiture of gain-time.

This court has apparently been presented with the dilemma created by the differing effective dates presented between Ch. 89-531 and 89-26 and has concluded that the State's authority to exact a forfeiture for violation of probationer community control under §948.06(6) is effective for offenses committed on or after October 1, 1989. See, Tripp v. State, 18 FLW S. 326 (Fla. June 10, 1993).

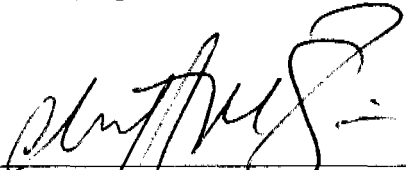
Accordingly, Petitioner is not entitled to gain time in the amount of seven (7) years previously served prior to violation of probation.

CONCLUSION

WHEREFORE, based upon the foregoing arguments, citation and authority, this Honorable Court should affirm the judgement of the Second District Court of Appeals.

Respectfully submitted,

ROBERT A. BUTTERWORTH  
ATTORNEY GENERAL

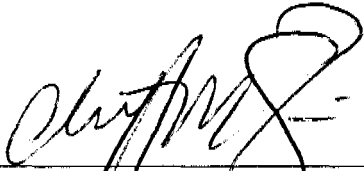


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Deborah K. Brueckheimer, Assistant Public Defender, P. O. Box 9000--Drawer PD, Bartow, Florida 33830, on this 19<sup>th</sup> day of July, 1993.



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COUNSEL FOR APPELLEE