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**FILED**

SID J. WHITE

JUL 20 1995

CLERK, SUPREME COURT  
By \_\_\_\_\_

Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA, :  
 :  
 Petitioner, :  
 :  
 vs. :  
 :  
 JAMES L. HALL, :  
 :  
 Respondent. :  
 :  
 \_\_\_\_\_ :

Case No. 85,490

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

ANSWER BRIEF OF RESPONDENT ON THE MERITS

JAMES MARION MOORMAN  
PUBLIC DEFENDER  
TENTH JUDICIAL CIRCUIT

ROBERT D. ROSEN  
Assistant Public Defender  
FLORIDA BAR NUMBER 826065

Public Defender's Office  
Polk County Courthouse  
P. O. Box 9000--Drawer PD  
Bartow, FL 33831  
(813) 534-4200

ATTORNEYS FOR RESPONDENT

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STATEMENT OF THE CASE AND FACTS

The Respondent accepts the Petitioner's Statement of the Case and Facts as accurate.

## SUMMARY OF THE ARGUMENT

The question at bar is if the sentencing court is required to orally pronounce the standard conditions of probation when placing a defendant on probation. Due process requires that a defendant be provided notice and opportunity to object. The list of suggested conditions in § 948.03(1), Fla. Stat. (1993), which the court "may include" in the conditions of probation is not sufficient notice of those conditions to relieve the need for oral pronouncement at the sentencing hearing if they are actually imposed.

The promulgated "Order of Probation" form with a list of standard conditions in Fla. R. Crim. P. 3.986(e) are also not sufficient notice of the conditions that will be actually be imposed. The sentencing court's orders of probation frequently do not and are not required to specifically follow the promulgated list as evidenced by the leniency provided in Fla. R. Crim. P. 3.986(a), the rule providing that failure to follow the form does not void the order.

There are other effective methods of notice other than oral pronouncement in open court. However, the defendant cannot simply be held accountable for notice based upon his counsel's possible knowledge of procedure as Petitioner suggests.

The court is required to orally pronounce the condition at sentencing or to assure due process notice and opportunity by some procedure. The statute and procedural rule alone are not sufficient notice to satisfy the due process requirement.

ARGUMENT

ISSUE

WHETHER THE PROMULGATION OF THE FORM "ORDER OF PROBATION" IN FLORIDA RULE OF CRIMINAL PROCEDURE 3.986 CONSTITUTE SUFFICIENT NOTICE TO PROBATIONERS OF CONDITIONS 1-11 SUCH THAT ORAL PRONOUNCEMENT OF THESE CONDITIONS BY THE TRIAL COURT IS UNNECESSARY?

The question certified to this Court is if the sentencing court is required to orally pronounce the imposition of probation conditions 1-11 as set forth in the form "Order of Probation" in Florida Rules of Criminal Procedure 3.986 when sentencing a defendant to probation. Emond v. State, 20 Fla. L. Weekly D675 (Fla. 2d DCA March 15, 1995); In Re Amend. to the Fla. Rules Cr. Proc., 603 So. 2d 1144 (Fla. 1992); Fla. R. Crim. P. 3.986(e).

In Petitioner's Brief on the Merits, the State of Florida contends that oral pronouncement of those conditions is not required. Petitioner asserts that publication of the statute gives constructive notice of general conditions listed by the legislature in § 948.03(1), Fla. Stat. (1993), and the promulgation of the "Order of Probation" by this Court also gives constructive notice of this Court's version of the 1-11 general conditions via counsel. Petitioner contends that such constructive notice relieves any obligation to orally pronounce "Order of Probation" conditions 1-11 at sentencing.

In the argument herein, Respondent establishes that neither the publication of the statute nor the promulgation of the "Order

of Probation" promulgated by this Court provides sufficient notice to relieve the due process requirement that the conditions of probation be orally pronounced at sentencing to provide the defendant with notice and opportunity to object to the conditions.<sup>1</sup>

Chapter 948 establishes probation and provides that the determination of the conditions of probation are to be a mixture of those determined by the legislature and those to be determined by the court.<sup>2</sup> The legislature placed limitations on the terms and conditions which can be placed on probation by the court such as a maximum of 364 days incarceration; certain facilities for residential treatment or incarceration; restrictions on required work; and restriction from revocation for inability to achieve education or training or make payments. § 948.03(5-8), 948.031, and 948.032 Fla. Stat. (1993).

The legislature required the imposition specific statutory drug treatment program conditions on probation following convictions in violation of Chapter 893, Florida Statutes (1993). § 948.034, Fla. Stat. (1993) Conditions regarding determination of the need of counseling and/or treatment for specified sex offenders is also required. § 948.03, Fla. Stat. (1993).

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<sup>1</sup> Amend. V and XIV, U.S. Const.; Art. I, § 9, Fla. Const.

<sup>2</sup> The certified question at bar addresses only the need for oral pronouncement. Potential issue regarding the simultaneous legislative and judicial determination of the applicable conditions of probation are not addressed herein. See, Art. II, § 3, Fla. Const.; Smith v. State, 537 So. 2d 982, 985 (Fla. 1989) (Judicial promulgation to grid schedules and recommended ranges for sentencing guidelines); Booker v. State, 514 So. 2d 1079, 1082 (Fla. 1987) (Legislative power to determine extent of departure from the sentencing guidelines.)



The legislature left the determination of other conditions to the discretion of the court. "The court shall determine the terms and conditions of probation or community control and may include among them the following, that the probationer or community control shall: [A specific list of suggested conditions (a)-(j)]." § 948.03(1), Fla. Stat. (1993) (emphasis added). "The enumeration of specific kinds of terms and conditions shall not prevent the court from adding thereto such other or others as it considers proper." § 948.03(5), Fla. Stat. (1993).

Oral pronouncement of a sentence is generally required. "The term sentence means the pronouncement by the court of the penalty imposed on a defendant for the offense of which the defendant has been adjudged guilty...Every sentence or other final disposition of the case shall be pronounced in open court." Fla. R. Crim. P. 3.700.

The district courts of appeal have determined that there are two types of conditions: "standard conditions" (those listed in statute by the legislature) which do not require oral pronouncement and "special conditions" (added by the courts) which due process requires oral pronouncement at sentencing.<sup>3</sup> When the sentencing court's "standard conditions" differ from the legislative suggested conditions, the appellate courts have renamed them "special conditions" and found them to warrant oral pronouncement. That is

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<sup>3</sup> Cumbe v. State, 597 So. 2d 946 (Fla. 1st DCA 1992); Olvey v. State, 609 So. 2d 640 (Fla. 2d DCA 1992); Shacraha v. State, 635 So. 2d 1051 (Fla. 4th DCA 1994); Cleveland v. State, 617 So. 2d 1166 (Fla. 5th DCA 1993); Tillman v. State, 592 So. 2d 767 (Fla. 2d DCA 1992).

the situation in the cases which have certified the instant question to this Court.<sup>4</sup>

Respondent does not dispute the legal principle that publication of statutes gives all citizens constructive notice of the consequences of their actions. In State v. Beasley, 580 So. 2d 139 (Fla. 1991), this Court found that, when costs and a surcharge are "statutorily mandated," the defendant is on constructive notice that the charges were a consequence of his criminal acts. In Hayes v. State, 585 So. 2d 397 (Fla. 1st DCA 1991), that court found:

Because of the requirement that the appellant submit to blood, breathalyzer, and urinalysis examinations accords with the provision of section 948.03(1)(j) for "random testing," it is a standard condition of probation, and under the rationale of Beasley it does not need to be orally pronounced. (emphasis added)

The Hayes rational is exemplary of that repeated in district court decisions. However, Respondent again points out that the legislature in 948.03(1) did not require those conditions--the court specifically "may include" them. Notice of conditions which the court might impose does not meet the same standard as notice of mandated consequences.

Due process requires that the conditions of probation be orally pronounced at sentencing to provide the defendant with notice and opportunity to object to the conditions. The contempo-

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<sup>4</sup> Decisions filed preceding the instant case: Hart v. State, 651 So. 2d 112 (Fla. 2d DCA 1995); Sheffield v. State, 651 So. 2d 160 (Fla. 2d DCA 1995); Geller v. State, 651 So. 2d 192 (Fla. 2d DCA 1995); Lietz v. State, 20 Fla. L. Weekly D675 (Fla. 2d DCA March 15, 1995); Emond v. State, 20 Fla. L. Weekly D675 (Fla. 2d DCA March 15, 1995).

aneous objection rule applies to conditions of probation not illegal or so egregious as to be the equivalent of fundamental error. Larson v. State, 572 So. 2d 1368, 1370-1371 (Fla. 1991). The conditions of probation need to either have a relationship to the crime of which the offender is convicted, it relates to conduct that is in itself criminal, or it requires or forbids conduct that is reasonably related to future criminality. Biller v. State, 618 So. 2d 734 (Fla. 1993). Any dispute the defendant may have with the imposition of a potential "standard condition" is waived by the lack of notice as to what specific provision are going to be imposed.

Further, imposition of the conditions set forth by the legislature in § 948.03(1) is within the court's discretion. If discretionary sentencing provisions are not orally pronounced, any resulting inconsistent written sentence is to be stricken. See, Green v. State, 615 So. 2d 823 (Fla. 4th DCA 1993) (Struck discretionary habitual minimum mandatory sentence imposed in writing, but not orally.). Therefore, all the conditions which the statute left to the discretion of the court require oral pronouncement.

Unlike the statutes, the Florida Rules of Criminal Procedure are not notice to the public regarding prohibited acts and resulting consequences. The promulgated rules of this Court are to inform those before the bench of the procedure to be followed.

This Court found that the forms set forth in 3.986(b) were to be used by all courts, but also specifically found that "Variations

from these forms do not void" the order. Fla. R. Crim. P. 3.986(a). A comparison of the Order of Probation appended hereto which placed Respondent on probation on December 9, 1993, to the 3.986(e) (1993) Order of Probation shows variations from the promulgated form by the sentencing court. The common occurrence of such variations is basis for the latitude permitted in 3.986(a). Thus, the form in 3.986(e) is not sufficient notice of what conditions will actually be imposed by the sentencing court.

Neither the statute nor the promulgated rules are sufficient notice of what conditions of probation will actually be imposed by the sentencing court. Due process requires that the defendant have notice and opportunity to object at the time of sentencing to conditions of probation being imposed by the court.

Petitioner's argument is that the defendant has constructive knowledge via the defendant's counsel, who is presumed to have knowledge of the statutes, procedures, and specific conditions-- that defendant should be bound by their counsel's knowledge. Petitioner's argument presumes all sentencing court orders will be as set forth in 3.986(e). Petitioner places the burden upon the defendant's counsel to know what conditions that court applies in all cases or to ask the court what conditions are being imposed upon his defendant.

Respondent finds Petitioner's argument to not be viable and to provide future basis for a multitude of ineffective assistance of counsel allegations. In Cleveland v. State, 617 So. 2d 1166, 1167 (Fla. 5th DCA 1993), that court addressed the requirement of

pronouncement of the conditions of probation and suggest a more viable solution--that the counsel be provided a copy of the order to be used, time be allowed for explanation to the defendant, and the defendant sign the order in open court. Both notice and opportunity to object would be assured.

The issue at bar is if the court is required to orally pronounce the standard conditions of probation at the sentencing hearing. Respondent has shown that the due process notice and opportunity to be heard requirement has not been satisfied by §945.03(1), Fla. Stat. (1993), or by Fla. R. Crim. P. 3.986(e). Oral pronouncement or some other viable method to satisfy due process is required.

### CONCLUSION

Based upon the cases cited and arguments presented herein, Respondent respectfully requests this Honorable Court answer the certified question at bar in the negative--this Court's promulgation of the form "Order of Probation" in the Florida Rule of Criminal Procedure 3.986 does not constitute sufficient notice to probationers of conditions 1-11 such that oral pronouncement of these conditions by the trial court is unnecessary. Further, Respondent requests this Court find that it is also necessary that the trial court orally pronounce the optional conditions listed in §948.03(1), Fla. Stat. (1993).

APPENDIX

PAGE NO.

1. Order of Probation, James L. Hall,  
Circuit Court case no. 92-483, December 9, 1993. A1-2

2. Fla. R. Crim. P. 3.986(e), West's Florida  
Criminal Laws and Rules, 1993, pgs. 858-859. A3-4

**JUDGEMENT, SENTENCE AND ORDER PLACING DEFENDANT  
ON PROBATION DURING PORTION OF SENTENCE**

THE CIRCUIT COURT OF CHARLOTTE COUNTY, FLORIDA

STATE OF FLORIDA  
Plaintiff

vs.

JAMES HALL  
Defendant

Case No. 92-483F

**THIS CAUSE** coming on this day to be heard before me and you, the defendant, JAMES HALL, being now present before me, and you having pled; \_\_\_GUILTY\_\_\_ X NO CONTEST\_\_\_GUILTY BY JURY to the offense of ATTEMPTED SECOND DEGREE MURDER WITH A FIREARM, the Court hereby adjudges you to be guilty of said offense; and,

It appears to the Court that the ends of justice and the welfare of society would be best served by imposing a sentence upon you and by placing you on probation after you have served a portion of such sentence.

Have you any cause to show why sentence should not be pronounced upon you? You saying nothing in bar or preclusion of sentence,

It is hereby ordered and adjudged that you be committed to the Department of Corrections for a term of FIFTEEN (15) YEARS WITH THREE (3) MINIMUM MANDATORY, with credit for 434 DAYS jail time, that after you have served BALANCE of said term, you shall be placed on probation for a period of TEN (10) YEARS under the supervision of the Department of Corrections and its officers, such supervision to be in accordance with the laws of this State. After you are released on probation you shall comply with the following conditions of probation:

- (1) NOT LATER THAN THE FIFTH DAY OF EACH MONTH, YOU WILL MAKE A FULL AND TRUTHFUL REPORT TO YOUR PROBATION OFFICER ON THE FORM PROVIDED FOR THAT PURPOSE.
  - (2) YOU WILL PAY THE STATE OF FLORIDA THE AMOUNT OF \$50.00 PER MONTH TOWARDS THE COST OF YOUR SUPERVISION, UNLESS OTHERWISE WAIVED IN COMPLIANCE WITH FLORIDA STATUTES 948.09.
  - (3) YOU WILL NOT CHANGE YOUR RESIDENCE OR EMPLOYMENT OR LEAVE THE COUNTY OF YOUR RESIDENCE WITHOUT FIRST PROCURING THE CONSENT OF YOUR PROBATION OFFICER.
  - (4) YOU WILL NEITHER POSSESS, CARRY OR OWN ANY WEAPONS OR FIREARMS.
  - (5) YOU WILL LIVE AND REMAIN AT LIBERTY WITHOUT VIOLATING THE LAW. A CONVICTION IN A COURT OF LAW SHALL NOT BE NECESSARY IN ORDER FOR SUCH A VIOLATION TO CONSTITUTE A VIOLATION OF YOUR PROBATION.
  - (6) YOU WILL NOT USE INTOXICANTS TO EXCESS; NOR WILL YOU VISIT PLACES WHERE INTOXICANTS, DRUGS OR OTHER DANGEROUS SUBSTANCES ARE UNLAWFULLY SOLD, DISPENSED OR USED.
  - (7) YOU WILL WORK DILIGENTLY AT A LAWFUL OCCUPATION AND SUPPORT ANY DEPENDENTS TO THE BEST OF YOUR ABILITY, AS DIRECTED BY YOUR OFFICER.
  - (8) YOU WILL PROMPTLY AND TRUTHFULLY ANSWER ALL INQUIRIES DIRECTED TO YOU BY THE COURT OR THE PROBATION OFFICER, AND ALLOW THE OFFICER TO VISIT IN YOUR HOME, AT YOUR EMPLOYMENT SITE OR ELSEWHERE, AND YOU WILL COMPLY WITH ALL INSTRUCTIONS HE MAY GIVE YOU.
- YOU ARE TO REPORT IN PERSON TO THE DEPARTMENT OF CORRECTIONS PROBATION OFFICE LOCATED IN THE COUNTY OF ORIGINAL JURISDICTION, IMMEDIATELY UPON YOUR RELEASE FROM PRISON/JAIL.

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CLERK OF THE COURT  
JAMES H. HARRIS



HALL, JAMES  
CS #92-483F  
DC# 897178

- (10) YOU WILL SUBMIT TO URINALYSIS, BREATHALYZER OR BLOOD TESTS AT ANY TIME REQUESTED BY YOUR OFFICER, OR THE PROFESSIONAL STAFF OR ANY TREATMENT CENTER WHERE YOU ARE RECEIVING TREATMENT, TO DETERMINE POSSIBLE USE OF ALCOHOL, DRUGS OR CONTROLLED SUBSTANCES.
- (11) YOU WILL PERFORM N/A HOURS OF PUBLIC SERVICE WORK, AS DIRECTED BY YOUR PROBATION OFFICER.
- (12) YOU WILL MAKE RESTITUTION IN THE AMOUNT OF \$24,371.92 PAYABLE TO THE CRIMES COMPENSATION FUND AND/OR DEBORAH SMITH.
- (13) YOU WILL PAY COST OF PROSECUTION IN THE AMOUNT OF \$\_\_ AS DIRECTED BY YOUR PROBATION OFFICER WITH FINAL PAYMENT AT LEAST 90 DAYS PRIOR TO TERMINATION.
- (14) YOU WILL PAY A FINE OF \$, PLUS COURT COSTS OF \$ 280.00 TO THE CLERK OF CIRCUIT COURT PAYABLE AT A MONTHLY RATE AS DIRECTED BY YOUR PROBATION OFFICER WITH FINAL PAYMENT AT LEAST 90 DAYS PRIOR TO TERMINATION.
- (15) YOU ARE TO HAVE NO CONTACT WITH THE VICTIM OR THE FAMILY.
- (16) PUBLIC DEFENDER FEE OF \$1,325.00.
- (17) P.D. COSTS OF \$1126.30. COSTS FOR ATTORNEY JESUS HEVIA TO BE DETERMINED.

TIER PROGRAM WHILE INCARCERATED.  
CREDIT TIME SERVED 434 DAYS  
30 DAYS TO APPEAL.

You are hereby placed on notice that the Court may at any time rescind or modify any of the conditions of your probation, or may extend the period of probation as authorized by law, or may discharge you from further supervision; and that if you violate any of the conditions of your probation, you may be arrested and the Court may revoke your probation and require you to serve the balance of said sentence.

It is further ordered that the Clerk of this Court file this Order in his office, record the same in the Minutes of the Court, and forthwith provide certified copies of same to the Probation Officer for his use in compliance with the requirements of law.

DONE AND ORDERED IN OPEN COURT, this the 21ST day of SEPTEMBER, A.D. 1993



JUDGE DONALD E. PELLECCIA

DOC# 897178 HC

I acknowledge receipt of a certified copy of this order. The conditions have been explained to me and I agree to abide by them.

Date: \_\_\_\_\_

Probationer \_\_\_\_\_

Instructed by: \_\_\_\_\_

Original: Court  
Copies: Probationer/File

DC4-900C

It is further ordered that the defendant shall be allowed a total of \_\_\_\_\_ days as credit for time incarcerated before imposition of this sentence.

Prison Credit

It is further ordered that the defendant be allowed credit for all time previously served on this count in the Department of Corrections prior to resentencing.

Consecutive/Concurrent as to Other Counts

It is further ordered that the sentence imposed for this count shall run (check one) \_\_\_\_\_ consecutive to \_\_\_\_\_ concurrent with the sentence set forth in count \_\_\_\_\_ of this case.

Consecutive/Concurrent as to Other Convictions

It is further ordered that the composite term of all sentences imposed for the counts specified in this order shall run (check one)

- consecutive to
concurrent with (check one) the following:
any active sentence being served.
specific sentences:

In the event the above sentence is to the Department of Corrections, the Sheriff of \_\_\_\_\_ County, Florida, is hereby ordered and directed to deliver the defendant to the Department of Corrections at the facility designated by the department together with a copy of this judgment and sentence and any other documents specified by Florida Statute.

The defendant in open court was advised of the right to appeal from this sentence by filing notice of appeal within 30 days from this date with the clerk of this court and the defendant's right to the assistance of counsel in taking the appeal at the expense of the state on showing of indigency.

In imposing the above sentence, the court further recommends \_\_\_\_\_

DONE AND ORDERED in open court at \_\_\_\_\_ County, Florida, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

Judge

(e) Form for Order of Probation.

In the \_\_\_\_\_ Court
of \_\_\_\_\_ County, Florida
Case Number \_\_\_\_\_

State of Florida

v.

Defendant

ORDER OF PROBATION

This cause coming on this day to be heard before me, and you, the defendant, \_\_\_\_\_ being now present before me, and you having

(check one)

- entered a plea of guilty to
entered a plea of nolo contendere to
been found guilty by jury verdict of
been found guilty by the court trying the case without a jury of the offense(s) of \_\_\_\_\_

SECTION 1: Judgment Of Guilt

The Court hereby adjudges you to be guilty of the above offense(s).

Now, therefore, it is ordered and adjudged that the imposition of sentence is hereby withheld and that you be placed on probation for a period of \_\_\_\_\_ under the supervision of the Department of Corrections, subject to Florida law.

SECTION 2: Order Withholding Adjudication

Now, therefore, it is ordered and adjudged that the adjudication of guilt is hereby withheld and that you be placed on probation for a period of \_\_\_\_\_ under the supervision of the Department of Corrections, subject to Florida law.

SECTION 3: Probation During Portion Of Sentence

It is hereby ordered and adjudged that you be
committed to the Department of Corrections
confined in the County Jail

for a term of \_\_\_\_\_ with credit for \_\_\_\_\_ jail time. After you have served \_\_\_\_\_ of the term you shall be placed on probation for a period of \_\_\_\_\_ under the supervision of the Department of Corrections, subject to Florida law.

confined in the County Jail
for a term of \_\_\_\_\_ with credit for \_\_\_\_\_ jail time, as a special condition of probation.

It is further ordered that you shall comply with the following conditions of probation during the probationary period.

- (1) Not later than the fifth day of each month, you will make a full and truthful report to your officer on the form provided for that purpose.
(2) You will pay the State of Florida the amount of \$\_\_\_\_\_ per month toward the cost of your supervision, unless otherwise waived in compliance with Florida Statutes.
(3) You will not change your residence or employment or leave the county of your residence without first procuring the consent of your officer.
(4) You will not possess, carry, or own any firearm. You will not possess, carry, or own any weapons without first procuring the consent of your officer.
(5) You will live without violating the law. A conviction in a court of law shall not be necessary for such a violation to constitute a violation of your probation.
(6) You will not associate with any person engaged in any criminal activity.
(7) You will not use intoxicants to excess or possess any drugs or narcotics unless prescribed by a physician. Nor will you visit places where intoxicants, drugs, or other dangerous substances are unlawfully sold, dispensed, or used.
(8) You will work diligently at a lawful occupation, advise your employer of your probation status, and support any dependents to the best of your ability, as directed by your officer.
(9) You will promptly and truthfully answer all inquiries directed to you by the court or the officer, and allow your officer to visit in your home, at your employment site, or elsewhere, and you will comply with all instructions your officer may give you.
(10) You will pay restitution, costs, and/or fees in accordance with the attached orders.

(11) You will report in person within 72 hours of your release from confinement to the probation office in \_\_\_\_\_ County, Florida, unless otherwise instructed by your officer. (This condition applies only if section 3 on the previous page is checked.) Otherwise, you must report immediately to the probation office located at \_\_\_\_\_

SPECIAL CONDITIONS

- \_\_\_ You must undergo a (drug/alcohol) evaluation and, if treatment is deemed necessary, you must successfully complete the treatment.
- \_\_\_ You will submit to urinalysis, breathalyzer, or blood tests at any time requested by your officer, or the professional staff of any treatment center where you are receiving treatment, to determine possible use of alcohol, drugs, or controlled substances. You shall be required to pay for the tests unless payment is waived by your officer.
- \_\_\_ You must undergo a mental health evaluation, and if treatment is deemed necessary, you must successfully complete the treatment.
- \_\_\_ You will not associate with \_\_\_\_\_ during the period of probation.
- \_\_\_ You will not contact \_\_\_\_\_ during the period of probation.
- \_\_\_ Other \_\_\_\_\_

(Use the space below for additional conditions as necessary.)

You are hereby placed on notice that the court may at any time rescind or modify any of the conditions of your probation, or may extend the period of probation as authorized by law, or may discharge you from further supervision. If you violate any of the conditions of your probation, you may be arrested and the court may revoke your probation, adjudicate you guilty if adjudication of guilt was withheld, and impose any sentence that it might have imposed before placing you on probation or require you to serve the balance of the sentence.

It is further ordered that when you have been instructed as to the conditions of probation, you shall be released from custody if you are in custody, and if you are at liberty on bond, the sureties thereon shall stand discharged from liability. (This paragraph applies only if section 1 or section 2 is checked.)

It is further ordered that the clerk of this court file this order in the clerk's office and provide certified copies of same to the officer for use in compliance with the requirements of law.

DONE AND ORDERED, this the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

Judge \_\_\_\_\_

I acknowledge receipt of a certified copy of this order. The conditions have been explained to me and I agree to abide by them.

Date \_\_\_\_\_ Probationer \_\_\_\_\_  
Instructed by \_\_\_\_\_

Original: Clerk of the Court  
Certified Copies: Probationer  
Florida Department of Corrections,  
Probation and Parole Services

(f) Form for Community Control.

In the \_\_\_\_\_ Court  
of \_\_\_\_\_ County, Florida  
Case Number \_\_\_\_\_

State of Florida

v.

Defendant \_\_\_\_\_

ORDER OF COMMUNITY CONTROL

This cause coming on this day to be heard before me, and you, the defendant, \_\_\_\_\_, being now present before me, and you having (check one)

- \_\_\_ entered a plea of guilty to \_\_\_\_\_
- \_\_\_ entered a plea of nolo contendere to \_\_\_\_\_
- \_\_\_ been found guilty by jury verdict of \_\_\_\_\_
- \_\_\_ been found guilty by the court trying the case without a jury of the offense(s) of \_\_\_\_\_

SECTION 1: Judgment of Guilt

\_\_\_ The court hereby adjudges you to be guilty of the above offense(s). Now, therefore it is ordered and adjudged that you be placed on community control for a period of \_\_\_\_\_ under the supervision of the Department of Corrections, subject to Florida law.

SECTION 2: Order Withholding Adjudication

\_\_\_ Now, therefore, It is ordered and adjudged that the adjudication of guilt is hereby withheld and that you be placed on Community Control for a period of \_\_\_\_\_ under the supervision of the Department of Corrections, subject to Florida law.

SECTION 3: Community Control During Portion Of Sentence

It is hereby ordered and adjudged that you be  
\_\_\_ committed to the Department of Corrections  
\_\_\_ confined in the County Jail

for a term of \_\_\_\_\_ with credit for \_\_\_\_\_ jail time. After you have served \_\_\_\_\_ of the term, you shall be placed on community control for a period of \_\_\_\_\_ under the supervision of the Department of Corrections, subject to Florida law.

\_\_\_ confined in the County Jail

for a term of \_\_\_\_\_ with credit for \_\_\_\_\_ jail time, as a special condition of community control.

It is further ordered that you shall comply with the following conditions of community control during the community control period.

- (1) Not later than the fifth day of each month, you will make a full and truthful report to your officer on the form provided for that purpose.
- (2) You will pay the State of Florida the amount of \$ \_\_\_\_\_ per month toward the cost of your supervision, unless otherwise waived in compliance with Florida Statutes.
- (3) You will not change your residence or employment or leave the county of your residence without first procuring the consent of your officer.

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CERTIFICATE OF SERVICE

I certify that a copy has been mailed to Dale E. Tarpley,  
Suite 700, 2002 N. Lois Ave., Tampa, FL 33607, (813) 873-4730, on  
this 18<sup>th</sup> day of July, 1995.

Respectfully submitted,



ROBERT D. ROSEN  
Assistant Public Defender  
Florida Bar Number 826065  
P. O. Box 9000 - Drawer PD  
Bartow, FL 33831

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Public Defender  
Tenth Judicial Circuit  
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/rdr