

<sup>045</sup>  
**FILED**

SID J. WHITE

JUN 16 1995

IN THE SUPREME COURT OF FLORIDA

CLERK, SUPREME COURT

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

STATE OF FLORIDA,

Petitioner,

v.

ROY PHANEUF,

Respondent.

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CASE NO.

5DCA NO.

85921  
94-1580

ON DISCRETIONARY REVIEW OF THE  
DISTRICT COURT OF APPEAL,  
FIFTH DISTRICT

JURISDICTIONAL BRIEF OF PETITIONER

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STATEMENT OF THE CASE AND FACTS

Respondent was sentenced as a habitual offender after pleading guilty to resisting an officer with violence. Respondent signed a plea form which set forth that a hearing may be held to determine if respondent was a habitual felony offender, what the maximum sentence respondent was facing as a habitual offender and that he would not be eligible for gain time if found to be a habitual offender. The Fifth District Court of Appeal vacated the habitual offender sentence and remanded the case for resentencing. In doing so the court relied on Santoro v. State, 644 So. 2d 585 (Fla. 5th DCA 1994), and Thompson v. State, 638 So. 2d 116 (Fla. 5th DCA 1994). Phaneuf v. State, no. 94-1580, slip op. (Fla. 5th DCA June 9, 1995). The state timely filed a notice to invoke discretionary jurisdiction of this court.

SUMMARY OF ARGUMENT

This court has accepted jurisdiction in Santoro, supra, and Thompson, supra, as well as several other cases, which are currently pending review by this court. The Fifth District relied on those cases in reaching its decision. This court should accept jurisdiction in this case.

ARGUMENT

POINT ON APPEAL

THE DECISIONS RELIED UPON BY THE DISTRICT COURT IN VACATING THE SENTENCE IMPOSED ARE PENDING REVIEW BEFORE THIS COURT; THERE IS PRIMA FACIE EXPRESS CONFLICT AND THIS COURT SHOULD EXERCISE ITS JURISDICTION.

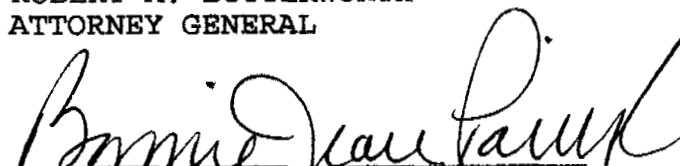
A district court decision that is either pending review in or has been reversed by this court constitutes prima facie express conflict and allows this court to exercise its jurisdiction. Jollie v. State, 405 So. 2d 418, 420 (Fla. 1981). In vacating the habitual offender sentence imposed in this case, the Fifth District relied upon Santoro, supra, and Thompson, supra. Both cases are currently pending review in this court. See case nos. 84,758 and 83,951 respectively. This court should exercise its jurisdiction in this case. Jollie, supra.

CONCLUSION

Based on the arguments and authorities presented herein, petitioner requests this court exercise its jurisdiction in this case.

Respectfully submitted,

ROBERT A. BUTTERWORTH  
ATTORNEY GENERAL

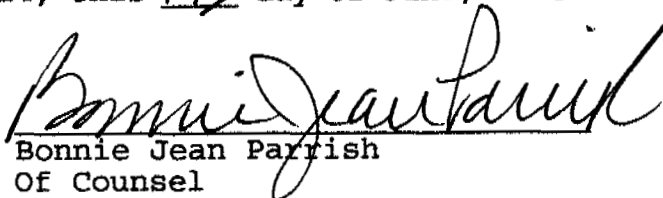


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Jurisdictional Brief of Petitioner has been furnished by delivery to Nancy Ryan, Assistant Public Defender, 112-A Orange Avenue, Daytona Beach, Florida 32114, this 14<sup>th</sup> day of June, 1995.



Bonnie Jean Parrish  
Of Counsel

R  
94-1456  
5/1/95

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

JANUARY TERM 1995

ROY PHANEUF,  
Appellant,

NOT FINAL UNTIL THE TIME EXPIRES  
TO FILE REHEARING MOTION, AND,  
IF FILED, DISPOSED OF.

v.  
STATE OF FLORIDA,  
Appellee.

CASE NO. 94-1580

RECEIVED  
JAN 9 1995  
CLERK OF DISTRICT COURT  
STATE OF FLORIDA

Opinion filed June 9, 1995  
Appeal from the Circuit Court  
for Volusia County,  
John W. Watson, III, Judge.

James B. Gibson, Public Defender,  
and Brynn Newton, Assistant  
Public Defender, Daytona Beach,  
for Appellant.

Robert A. Butterworth, Attorney  
General, Tallahassee, and Ann M. Childs,  
Assistant Attorney General, Daytona Beach,  
for Appellee.

PER CURIAM.

We vacate the sentence imposed upon Roy Phaneuf and remand  
for resentencing. Thompson v. State, 638 So. 2d 116 (Fla. 5th  
DCA), rev. granted, State v. Blackwell, 649 So. 2d 234 (Fla. 1994)  
(Table).

If probation is imposed as a portion of the sentence,  
monetary conditions may not be converted to community service  
hours. See Price v. State, 620 So. 2d 1105 (Fla. 4th DCA 1993)  
(trial court erred in ordering defendant to perform community



service in lieu of payment of costs; section 27.3455 authorizing community service in lieu of payment of costs was amended in 1986 to eliminate this alternative); Parks v. State, 595 So. 2d 1056 (Fla. 4th DCA 1992) (same); Bush v. State, 579 So. 2d 362 (Fla. 4th DCA 1991) (same); Sims v. State, 520 So. 2d 675 (Fla. 5th DCA 1988) (same); State v. Hansley, 514 So. 2d 1135 (Fla. 5th DCA 1987) (same); Rowe v. State, 558 So. 2d 174 (Fla. 5th DCA 1990) (state concedes court without authority to impose community service in lieu of costs under section 27.3455); State v. Muoio, 438 So. 2d 160 (Fla. 2d DCA 1983) (trial judge may not impose community service in lieu of mandatory fine imposed by section 316.193; all statutory references to community service work indicate such service be considered as extra sanction or additional condition of probation).

REVERSED AND REMANDED.

HARRIS, C.J., PETERSON and GRIFFIN, JJ., concur.