IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

vs.

ANTHONY LANCASTER,

Respondent.

Case No. 86,312

DCA Case No. 94-2471

RESPONDENT'S ANSWER BRIEF ON DISCRETIONARY JURISDICTION

RICHARD L. JORANDBY
Public Defender
Fifteenth Judicial Circuit of Florida

ANTHONY CALVELLO
Assistant Public Defender
Florida Bar No. 266345
Criminal Justice Building/6th Floor
421 3rd Street
West Palm Beach, Florida 33401
(407) 355-7600

Attorney for Anthony Lancaster

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES **PAGE(S)**

FLORIDA CONSTITUTION

FLORIDA RULES OF APPELLATE PROCEDURE

PRELIMINARY STATEMENT

Respondent was the defendant in the Criminal Division of the Circuit Court of the Nineteenth Judicial Circuit, In and For Indian River County, Florida and the appellant in the Fourth District Court of Appeal. Petitioner was the prosecution and the appellee below.

In the brief, the parties will be referred to as they appear before this Honorable Court.

The symbol "PB" will denote Petitioner's Brief on Jurisdiction.

STATEMENT OF THE CASE AND FACTS

Respondent, Anthony Lancaster, accepts the Petitioner's *Statement of the Case and Facts* except all references to any matters not contained in the opinion of the Fourth District Court of Appeal in the instant case. See *Kennedy v. Kennedy*, 641 So. 2d 408 (Fla. 1994).

Respondent was convicted of a second degree murder that was alleged to have occurred on May 3, 1987, and sentenced to seventeen (17) years in prison followed by a term of twenty (20) years probation. He was released from prison and commenced serving the probation portion of his split sentence. Respondent was subsequently found to have violated his probation and on August 17, 1994,was sentenced to a term of thirty (30) years in prison. The trial court's order sentencing Respondent to thirty (30) years in prison provided for both jail credit and gain time by indicating that:

> Defendant is allowed credit for 334 days county jail credit served between date of arrest and date of resentencing. The Department of Corrections shall apply original jail credit awarded and shall compute and apply credit for time served and unforfeited gain time awarded during prior service of case number [87-351].

Id. at 1346.

Respondent appealed the trial court's sentencing order following revocation of his probation to the Fourth District Court of Appeal. On appeal, Respondent argued "that the trial court erred in failing to award him credit for all time previously accrued on his original sentence." *Lancaster v. State*, 20 Fla. L. Weekly D1345 (Fla. 4th DCA June 7, 1995). On this issue, the Fourth District held:

> Concerning defendant's claim that he is entitled to credit for his entire seventeen-year jail term of his original sentence, prior to the supreme court's recent decision in *Orosz v. Singletary*, 20 Fla. L. Weekly S150 (Fla. Mar. 30, 1995), the supreme court had indicated that gain time to be credited was limited to earned gain time and did not include administrative

gain time and provisional credits. *See Tripp v. State*, 622 So. 2d. 941, 943 n. 2 (Fla. 1993). After the sentencing order and the briefing in this case, the supreme court decided *Orosz*, which provides that a defendant who committed an offense prior to October 1, 1989 and complete his sentence prior to the enactment of section 944.278, Florida Statutes (1993), has a vested right to previously awarded gain time and provisional credits. 20 Fla. L. Weekly at S151. To retroactively cancel administrative gain time and provisional credits would unconstitutionally violate a defendant's constitutional rights against ex post facto laws and bills of attainder. *Id.* ***Thus, if upon remand it is determined that defendant completed his original sentence prior to 1993***, when the legislature enacted section 944.278 and retroactively cancelled all awards of administrative gain time and provisional credits, defendant should be properly credited not only with earned gain time but with administrative gain time and provisional credits.

Id. at 1346 [Emphasis Added].

SUMMARY OF ARGUMENT

This Honorable Court should decline to exercise its discretionary jurisdiction to review the decision of the Fourth District in the instant cause, *Lancaster v. State*, 20 Fla. L. Weekly D 1345 (Fla. 4th DCA June 7, 1995). Petitioner-State has utterly failed to demonstrate that the Fourth District in *Lancaster* announced any rule of law which conflicts with a rule previously announced by this Court in *Orosz v. Singletary*, 655 So. 2d. 1112 (Fla. 1995) or that the Fourth District applied a rule of law to produce a different result in a case which involves substantially the same facts as another case. Hence, this Court should deny Petitioner-State's request for discretionary jurisdiction over this cause.

ARGUMENT

THIS COURT SHOULD DECLINE TO EXERCISE DISCRETIONARY JURISDICTION TO REVIEW THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL BECAUSE IT DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH A DECISION OF THIS COURT OR ANOTHER DISTRICT COURT OF APPEAL.

This Court pursuant to Article V, Section 3(b)(3), *Florida Constitution* (1980), has the authority to review a decision of a district court of appeal that expressly and directly conflicts with a decision of another district court of appeal or this Court on the same question of law. See also *Fla.R.App.P.* 9.030(a)(2)(A)(iv). "Conflict" jurisdiction is properly invoked where: (1) the district court announced a rule of law which conflicts with a rule previously announced by the Supreme Court or by another district, or (2) the district court applies a rule of law to produce a different result in a case which involves substantially the same facts as another case. *Mancini v. State*, 312 So. 2d. 732, 733 (Fla. 1975). Thus in order for two court decisions to be in express and direct conflict for purposes of invoking this Court's discretionary jurisdiction under *Fla.R.App.P.* 9.030(a)(2)(A)(iv), the decision should speak to the same point of law, in factual context of sufficient similarity to compel the conclusion that the results in each case would have been different had the deciding court employed the reasoning of the other court. *See Mancini, supra.*

It is not sufficient to show that the district court decision is "effectively" or by implication in conflict with the other decisions. The term "expressly" requires some written representation of the legal grounds supporting the decision under review. *Jenkins v. State*, 385 So. 2d 1356 (Fla. 1980). As explained in *Florida Star v. B.J.F.*, 530 So. 2d. 286 (Fla. 1988), "the Supreme Court in the broadest sense has subject matter jurisdiction under article V, section 3(b)(3) of the Florida Constitution, over any decision of a district

court that expressly address a question of law within the four corners of the opinion itself." *Florida Star*, 530 So. 2d. at 288. This Court must look to the *opinion* of the Fourth District Court of Appeal to determine whether the decision is in direct conflict with a decision of the Supreme Court or another district court of appeal. *Kennedy v. Kennedy*, 641 So. 2d. 408 (Fla. 1994).

In *Orosz v. Singletary*, *supra*, this Court granted the petitioner-prisoner *partial* relief on his petition for a writ of mandamus.[1] Mr. Orosz was serving two (2) consecutive sentences. As to Mr. Orosz's first sentence, which had been completed, this Court expressly held "that the Department's cancellation of administrative gain time and provisional credits previously awarded on Orosz's first sentence was improper. We hold that this prisoner, who has fully completed a sentence because of gain time awarded under the proper interpretation of the statutes applicable to his sentence ***has a vested right in that gain time.***" *Id.* at 1114 [Emphasis Added].

Respondent-Defendant Lancaster fully completed the incarceration portion of his seventeen (17) year original sentence and he was subsequently released from prison to serve the probation portion of his split sentence. Thus, Mr. Lancaster, like the prisoner in *Orosz*, had a *vested right* in the gain time he had already received and utilized to secure his release from prison prior to the expiration of the full seventeen (17) year period.[2] Hence, the court's decision in *Orosz* supports the Fourth District's opinion at bar rather than being in conflict.

As Judge Pariente, writing for the Fourth District, explained:

---

[1] This Court in *Orosz* also emphasized that it presented unique circumstances and should affect only a very limited class of inmates. *Orosz*, 655 So. 2d at 1114 n.1.

[2] It must be stressed here that any change in the law by virtue of Chapter 89-531, that revocation of probation serves to forfeit any gain time previously earned *does not apply to Respondent Lancaster* because his original offense (second degree murder) was committed before October 1, 1989, the effective date of the act.

> After the sentencing order and the briefing in this case, the supreme court decided *Orosz*, which provides that a defendant who committed an offense prior to October 1, 1989, and completed his sentence prior to the enactment of section 944.278, Florida Statutes (1993) has a vested right previously awarded gain time and provisional credits. 20 Fla. L. Weekly at S151. To retroactively cancel administrative gain time and provisional credits would unconstitutionally violate a defendant's constitutional rights against ex post facto laws and bills of attainder. *Id.* Thus, if upon remand it is determined that defendant completed his original sentence prior to 1993, when the legislature enacted section 944.278 and retroactively cancelled all awards of administrative gain time and provisional credits, defendant should be properly credited not only with earned gain time but with administrative gain time and provisional credits.

Id. at 1346.

Here, in full compliance with *Orosz*, the Fourth District granted Respondent only *conditional relief*, i.e., if he can establish on remand that he "completed his original sentence prior to 1993, when the legislature enacted Section 944.278 and retroactively cancelled all awards of administrative gain time and provisional credit."

Thus, contrary to Petitioner-State's suggestion, the Fourth District in *Lancaster* has not "expressly held that the cancellation of overcrowding credits violates ex post facto law." PB 7. Petitioner's attempt to explain how the Fourth District in *Lancaster* inadvertently wrote a decision in conflict with *Orosz* is vague and unpersuasive. PB 8.

Finally, contrary to the assertions made by the Petitioner, the Fourth District's decision in *Lancaster* is fully supported by this Court's decision in *Tripp v. State*, 622 So. 2d. 941 (Fla. 1993). Under *Tripp*, Respondent is entitled to credit for all time spent incarcerated, including all gain/administrative time awarded on the incarcerative portion of his original split sentence (17 years) to be credited toward his new sentence after probation was revoked (up to twenty seven years). *See also State v. Green*, 547 So. 2d. 925, 927 (Fla. 1987). All Respondent sought on appeal was a reduced sentence of 22-27 years

with credit for seventeen (17) years in prison in which he was fully vested. *See Orosz*. Therefore, this Honorable Court should decline Petitioner-State's request for discretionary review.

CONCLUSION

Respondent requests this Court to decline jurisdiction to review the merits of this case.

Respectfully Submitted,

RICHARD L. JORANDBY
Public Defender
Fifteenth Judicial Circuit of Florida

ANTHONY CALVELLO
Assistant Public Defender
Florida Bar No. 266345
Criminal Justice Building/6th Floor
421 3rd Street
West Palm Beach, Florida 33401
(407) 355-7600

Attorney for Anthony Lancaster

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished by courier to Sarah Mayer, Assistant Attorney General, Third Floor, 1655 Palm Beach Lakes Boulevard, West Palm Beach, Florida 33401-2299 this 26th day of September, 1995.

Attorney for Anthony Lancaster