IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. 87,109

STATE OF FLORIDA,

Petitioner,

vs.

DAVID DUGAN, et al.,

Respondents.

PETITIONER'S REPLY BRIEF ON THE MERITS

ROBERT A. BUTTERWORTH

Attorney General
Tallahassee, Florida

GEORGINA JIMENEZ-OROSA
Bureau Chief
Senior Assistant Attorney General

SARAH B. MAYER
Assistant Attorney General
Florida Bar No. 367893
1655 Palm Beach Lakes Blvd., Ste 300
West Palm Beach, Florida 33401
Telephone: (407) 688-7759

Counsel for Petitioner

TABLE OF CONTENTS

TABLE OF CITATIONS

CASES

OTHER AUTHORITY

STATEMENT OF THE CASE AND FACTS

Petitioner adopts and realleges the statement of the case and facts as set forth in its initial brief.

SUMMARY OF THE ARGUMENT

Florida Statute 397.705 neither expressly not impliedly authorizes dismissal of charges by a trial court, rather the statute was intended to provide **sentencing and/or adjudicatory** alternatives in circumstances where a defendant successfully completes substance abuse treatment. By comparison, F.S. 948.08 does expressly provide for the dismissal of charges but only under specific circumstances where a defendant had been shown to meet certain statutory qualifying criteria, criteria which were not considered in this case. Moreover, the Fourth District's interpretation of F.S. 397.705 as allowing a trial court to unilaterally dismiss charges has the effect of usurping prosecutorial function and discretion in the absence of an express statutory grant of authority to do so. The opinion of the Fourth District must be quashed and the trial court's order of dismissal must be reversed.

ARGUMENT

CHAPTER 397.705, FLORIDA STATUTES, DOES NOT AUTHORIZE A TRIAL COURT TO DISMISS CHARGES AGAINST A DEFENDANT UPON HIS COMPLETION OF A SUBSTANCE ABUSE PROGRAM OVER OBJECTION BY THE STATE.

Respondent argues that the plain meaning of section 397.705 authorizes trial courts to dismiss criminal charges over the objections of the state attorney. Petitioner's query is: If the **"plain"** meaning of section 397.705 authorizes dismissal of criminal prosecutions, then why does the word "dismissal" not appear **anywhere** in the statute? Both the former and the present versions of section 397 authorize a trial court to refer a defendant to substance abuse treatment in lieu of or instead of actions such as **penalty, probation, sentence, imprisonment, final adjudication**. Nowhere does the statute state that trial courts are authorized to terminate criminal prosecutions. Clearly the **plain and literal** meaning of the language of section 397 authorizes trial courts to employ adjudicatory and/or sentencing alternatives upon successful completion of a substance program, **and nothing more**.

Contrary to Respondent's assertion and the district court's opinion, the State does not and did not contend that the authority granted by section 397 was limited to sentencing

alternatives. The statute plainly authorizes adjudicatory alternatives as well; that is, section 397 plainly authorizes a trial court to withhold adjudication. However, withholding adjudication or sentence is a vastly different action from outright dismissal of criminal prosecutions. The statute neither plainly nor expressly grants a trial court authority to dismiss charges against a defendant.

As is noted by Respondent, Petitioner has indeed focused on the words "adjudication", "penalty", and "sentence" in arguing that the trial court's and Fourth District's interpretation of section 397 is incorrect. Petitioner has done so because well established principles of statutory construction **require** examination of the meaning of those specifically enumerated words to determine the meaning of the general words which follow it, i.e. "other action". Green v. State, 604 So. 2d 471 (Fla. 1992); Devin v. City of Hollywood, 351 So. 2d 1022 (Fla. 4th DCA 1976). Adjudication and imposition of penalty or sentence are actions which a trial court is expressly authorized by statute to take, as well as being traditional judicial functions. Dismissal of cases on the other hand, is a traditional function of the State Attorney's Office, and clearly not an action which trial courts are authorized to take in the absence of **express statutory**

authority. State v. Turner, 636 So. 2d 815 (Fla. 3rd DCA 1994); State v. Bryant, 549 So. 2d 1155 (Fla. 3rd DCA 1989); State v. Serra, 529 So. 2d 1262 (Fla. 3rd DCA 1988); State v. McClain, 509 So. 2d 1360 (Fla. 2nd DCA 1987); State v. Daise, 508 So. 2d 560 (Fla. 4th DCA 1987); State v. Brown, 416 So. 2d 1258 (Fla. 4th DCA 1982); In re the Interest S.R.P., 397 So. 2d 1052 (Fla. 4th DCA 1981); State v. Jogan, 388 So. 2d 322 (Fla. 3rd DCA 1980). As adjudication and sentencing are functions which are assigned to the judiciary branch of the government and are very different actions from prosecution and dismissal of criminal charges, functions which are assigned to the executive branch of the government, and as section 397 does not contain the word "dismissal", Petitioner submits that Respondent and the district court's interpretation of the "other action" language of section 397 as authorizing trial courts to dismiss criminal prosecutions is a plain **misinterpretation** of the language of the statute and can not be approved.

Contrary to Respondent's assertion and the district court's implicit finding, Petitioner has never agreed that section 397 required interpretation or was susceptible of differing interpretations. Petitioner's position is, and always has been that the trial court erred in dismissing the charges against

Respondent pursuant to section 397, because the clear and express language of that statute does not authorize such action by trial courts. Despite his many protestations to the contrary, it is Respondent who has urged courts to read into the statute an action which is neither plainly nor expressly enumerated anywhere in the statute. Indeed, Respondent acknowledges that dismissal is not mandated by the statute, but asserts that there is no reason to conclude that the Legislature did not intend to authorize dismissal as an alternative to adjudication and sentencing. See Respondent's Brief at page 7. Petitioner submits that Respondent's assertion, and the Fourth District's opinion, that the Legislature **meant** to authorize trial courts to take action as drastic as dismissal of criminal prosecutions without expressly authorizing that action is directly contrary to decisions of this and other courts of the State of Florida, as well as established principles of statutory construction, and can not be upheld.

Further, Respondent's assertion that reference to section 948 does not provide guidance in interpretation of section 397 because section 397 predates section 948 and because the statutes relate to different programs, misses Petitioner's argument. The fact that section 397 predates section 948 makes no difference

one way or another; dismissal was not authorize under the prior version of the statute either. The point is that **both** statutes relate to substance abuse treatment programs, thus they should be construed together. State v. Jett, 626 So. 2d 691 (Fla. 1993); Scates v. State, 603 So. 2d 504 (Fla. 1992); Florida Police v. Dept. of Agriculture, 557 So. 2d 146 (Fla. 1st DCA 1990), quashed (on other grounds), 574 So. 2d 120 (Fla. 1991); Ferguson v. State, 377 So. 2d 709 (Fla. 1979). However, regardless of whether one examines the former or the amended statutes, **only** section 948 expressly authorizes dismissal as an option. By including dismissal language in section 948, the legislature indicated that it was aware of dismissal as an option; obviously, if the legislature had intended that dismissal of the charges be an option under section 397, such language would have been included there as well. As it was not, and as chapter 397 pertains only to adjudicatory or penalty options, it cannot be assumed that the legislature intended an action for which it did not expressly provide.

Additionally, while Respondent appears to acknowledge that there are no restrictions on eligibility for referral for treatment under section 397, he argues that the restrictions contained in section 948 serve to segregate those with less

severe substance abuse problems from those with more severe problems. Respondent simply ignores the fact that any person, regardless of how many or how severe crimes he has committed, is eligible for referral to treatment pursuant to section 397. Assuming there is merit to Respondent's theory that there is a difference between serious drug offenders and less severe drug offenders, it is ironic that pursuant to his and the Fourth District's interpretation of section 397, repeat offenders and/or violent criminal defendants are eligible for the identical treatment upon completion of a substance abuse program. Petitioner submits that such a result is plainly illogical.

Finally, Respondent argues that dismissal of the charges in this case is not an usurpation of prosecutorial discretion and function because the legislature granted the trial court such authority under section 397[1]. Petitioner submits, as argued throughout, since the legislature **did not** plainly or expressly provide for dismissal of the charges as an option under section

---

[1] Respondent asserts in footnote 2 of his brief that the State was attempting to mislead this Court with respect to anticipated action in these cases. As Respondent is well aware, but neglected to inform this Court, the reason many of these cases had been idle for several years is because the State unsuccessfully appealed the trial court's practice of entering into plea bargains with defendants wherein the court agreed to dismiss the charges against a defendant if he successfully completed drug therapy. Another reason some of these cases have ben around for such a long time is because the defendants in those cases repeatedly violated the terms of their probation , but were given second, and third and fourth chances by the trial court.

397, such action is improper, interferes with prosecutorial function, and cannot be sustained.

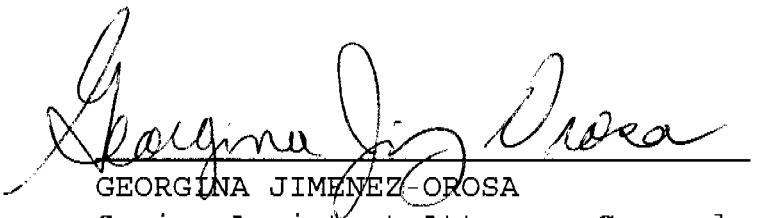
Clearly the **plain and literal** meaning of the language of section 397 does not authorize trial courts to dismiss charges upon completion of a substance abuse program, thus the opinion of the Fourth District in this case must be quashed.

CONCLUSION

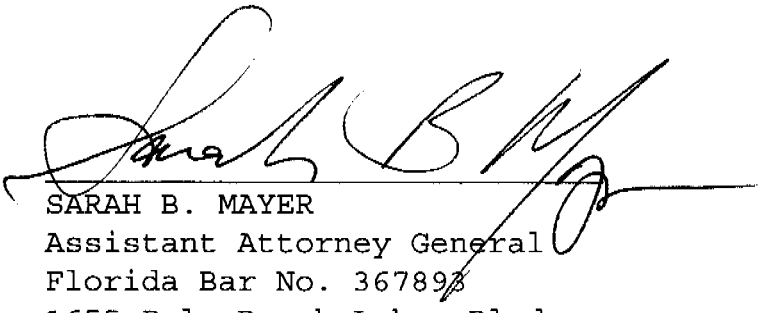
Wherefore, based on the foregoing arguments and the authorities cited therein, Petitioner respectfully requests this Court QUASH the decision of the Fourth District, and REVERSE the trial court's order of dismissal below.

Respectfully submitted,

ROBERT A. BUTTERWORTH
Attorney General
Tallahassee, Florida



GEORGINA JIMENEZ-OROSA
Senior Assistant Attorney General
Florida Bar No. 441510



SARAH B. MAYER
Assistant Attorney General
Florida Bar No. 367893
1655 Palm Beach Lakes Blvd.
Suite 300
West Palm Beach, FL 33401-2299
(407) 688-7759

Counsel for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing "Reply Brief of Petitioner" has been furnished by Courier to: CHERRY GRANT, Assistant Public Defender, Criminal Justice Building/6th Floor, 421 Third Street, West Palm Beach, FL 33401, this 26th day of March, 1996.

Of Counsel