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FILED
SID J. WHITE
JUL 10 1997
CLERK, SUPREME COURT
By
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

TEAYOIR SCANTLING,

Petitioner,

v. :

STATE OF FLORIDA, :

Appellee. :

SUP.CT. CASE NO. 90,968
1ST DCA CASE NO. 96-2035

ON REVIEW FROM THE DISTRICT COURT OF APPEAL,
FIRST DISTRICT OF FLORIDA

PETITIONER'S BRIEF ON JURISDICTION

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TABLE OF CITATIONS

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PETITIONER'S BRIEF ON JURISDICTION

I PRELIMINARY STATEMENT

Petitioner, TEAYOIR SCANTLING, was the defendant in the trial court and appellant in the District Court of Appeal, First District. He will be referred to in this brief as Petitioner or by his proper name. Respondent, the State of Florida, was the prosecuting authority and appellee in the courts below and will be referred to herein as the State.

The opinion of the District Court is reported in Scantling v. State, 22 Fla. L. Weekly D1491 (Fla. 1st DCA June 17, 1997), and is attached as an appendix to this brief. The appendix will be designated as "A."

II JURISDICTIONAL STATEMENT

This Court has jurisdiction based on express and direct conflict with the decision of another district court of appeal on the same question of law. Article V, Section 3(b)(3), Fla. Const.

III STATEMENT OF THE CASE AND FACTS

The relevant facts pertaining to the issue before the Court are set forth in the District Court's opinion in Scantling v. State, 22 Fla. L. Weekly D1491 (Fla. 1st DCA June 17, 1997):

> The appellant was imprisoned under a sentence for an earlier offense, and after serving a portion of that term he was placed on control release and then committed another offense. In imposing the present sentence for this offense the court indicated that this sentence would be consecutive to 'the sentence he is currently serving.' However, the appellant notes that the sentencing papers indicate that the present sentence would be consecutive to any sentence received for violation of control release, and that this is precluded by Currelly [*v.* State, 678 So. 2d 453 (Fla. 1st DCA 1996)] under the theory that the present sentence would be consecutive to an undetermined future sentence.

(A).

The Criminal Division of the First District Court of Appeal, sitting en banc, receded from its decision in Currelly v. State, 678 So. 2d 453 (Fla. 1st DCA 1996), and affirmed Scantling's consecutive sentence. The court reasoned that an inmate on control release has already been sentenced for the earlier offense and does not receive a new sentence. Consequently, an inmate violating control release is imprisoned under a sentence which has previously been determined and imposed, and a separate sentence for another offense committed while on control release may be ordered to run consecutive to the earlier sentence.

In receding from its prior decision in Currelly, the court also acknowledged conflict with a decision of the Fourth District Court of Appeal in Lyons v. State, 672 So. 2d 654 (Fla. 4th DCA 1996). (A).

IV SUMMARY OF ARGUMENT

The First District Court of Appeal had previously held that it was error to order a defendant's sentence to run consecutive to any sentence received for violation of control release, noting that the sentence for the violation of control release was an undetermined future sentence. Currelly. The District Court receded from its holding in Currelly in the instant case and held that the sentence imposed for the violation of control release is not an undetermined future sentence and thus it was not error to impose a new sentence to run consecutive to any sentence imposed for the violation of control release. This holding expressly and directly conflicts with the decision of the Fourth District Court of Appeal in Lyons.

This Court should accept jurisdiction in the instant case to resolve that conflict.

V ARGUMENT

ISSUE PRESENTED

THE OPINION IN SCANTLINE V. STATE, 22 Fla. L. Weekly D1491 (Fla. 1st DCA June 17, 1997), EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL IN LYONS V. STATE, 672 So. 2d 654 (Fla. 4th DCA 1996), ON THE SAME QUESTION OF LAW.

In Lyons v. State, the defendant was released from prison on control release, and while on release, he was charged with dealing in stolen property. Upon his guilty plea to the new charge, the court imposed a sentence to run consecutive to any control release violation and/or any other sentence **presently** being served. The District Court reversed the sentence, relying on Teffeteller v. State, 396 So.2d 1171 (Fla. 5th DCA 1981), and held that in order for a sentence to start to run at the expiration of another sentence, the record must reflect the terms of the other sentence. The Fourth District concluded that because the sentence for the control release violation had not yet been imposed in the present case, it was error to order the new sentence to run consecutive to an undetermined future sentence.

Likewise, in Currelly v. State, the First District, citing Lvons. held that it was error to order the defendant's sentence to run consecutive to any sentence received for violation of the defendant's control release in another case, noting that the sentence for the violation of control release was an undetermined future sentence.

Less than one year later, the Criminal Division of the First District, sitting en banc, receded from Currelly in Scantling v. State and affirmed Scantling's sentence which was order to run

consecutive to any sentence he received for violation of control release. The court stated:

> [W]e disagree with the apparent assumption in Currelly and Lyons that a violation of control release will result in a new and undetermined sentence to be imposed in the future. An inmate on control release has already been sentenced for the earlier offense, and pursuant to section 947.141(4), Florida Statutes, an inmate violating control release may be returned to prison for the continued service of that sentence. Because this is not a new sentence, and the inmate is instead imprisoned under a sentence which has previously been determined and imposed, a separate consecutive sentence for another offense committed while on control release is not thereby precluded.

(A). The court expressly acknowledged conflict with Lyons.

The conflict between the decisions of the First and Fourth District Courts of Appeal in Scantling and Currelly is manifest. Petitioner avers this Court should accept jurisdiction of this cause to resolve that conflict.

VI CONCLUSION

The District Court's decision in the instant case expressly and directly conflicts with the decision of the Fourth District in Lyons v. State. This Court should accept jurisdiction to review that decision and resolve the inter-district conflict.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Petitioner's Brief on Jurisdiction has been furnished by delivery to Edward C. Hill, Assistant Attorney General, Criminal Appeals Division, The Capitol, Plaza Level, Tallahassee, Florida, 32301; and a copy has been mailed to Petitioner, Mr. Teayoir Scantliing, on this 10th day of July, 1997.

Paula S. Saunders
PAULA S. SAUNDERS