IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,	:	
Petitioner,	:	
vs.	:	Case No. 91,655 DCA No. 96-01923
CHUCK JUNIOR WILLIAMS,	:	
Respondent.	:	
	:	

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

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ATTORNEYS FOR RESPONDENT

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PRELIMINARY STATEMENT

Respondent, CHUCK JUNIOR WILLIAMS, was the defendant in the trial court and Appellant in the District Court of Appeal of Florida, Second District. Respondent will be referred to also by name as Mr. Williams or as the Defendant. Petitioner, THE STATE OF FLORIDA, was the prosecuting authority in the trial court and Appellee in the District Court of Appeal. The symbol "R" designates the original record on appeal, while the symbol "T" designates the transcript of the trial from the record on appeal. The symbol "V" designates the volume of the record on appeal together with the number identifying the particular volume, i.e., V1.

STATEMENT OF THE CASE AND FACTS

Respondent, Chuck Junior Williams, generally accepts Petitioner's representations regarding the Statement of the Case and Facts. Additionally, Mr. Williams notes the following the relevant facts for the Court's consideration. Condition (8) was listed together with other conditions of probation under a section titled:

> IT IS FURTHER ORDERED THAT YOU SHALL COMPLY WITH THE FOLLOWING CONDITIONS OF PROBATION AND OR COMMUNITY CONTROL:
>
> ....
>
> (8) You will submit to and pay for random testing as directed by the supervising officer or professional staff of the treatment center where you are receiving treatment to determine the presence of alcohol or controlled substances.

(V1, R58). Conditions (20) and (24) were listed together with other conditions on the next page under a section titled:

> ADDITIONAL CONDITIONS OF PROBATION/COMMUNITY CONTROL:
>
> ....
>
> (20) You shall submit to and pay for an evaluation to determine whether or not you have any treatable problem with (alcohol) (any illegal drugs). If you have said problem, you are to submit to, pay for, and successfully complete any recommended treatment program as a result of said evaluation, all to be completed at the discretion of your Supervising Officer.
>
> ....
>
> (24) You will obtain an evaluation to determine if you are in need of inpatient drug treatment. If so, you will enter and successfully complete, at your own expense, the recommended inpatient treatment program at DOC. You will abide by all the rules, regulations, and programs set forth by the treatment center. You will complete and pay for any aftercare treatment as recommended by the inpatient facility.

(V1, R59).

SUMMARY OF THE ARGUMENT

The requirement that a defendant pay for drug testing should not be treated as a general condition of probation for which notice was provided by Section 948.09(6), Florida Statutes (1995). Instead, requiring a defendant to pay for drug testing should continue to be treated as a special condition of probation requiring oral announcement at sentencing.

ARGUMENT

ISSUE I

SHOULD THE REQUIREMENT THAT A DEFENDANT PAY FOR DRUG TESTING BE TREATED AS A GENERAL CONDITION OF PROBATION FOR WHICH NOTICE IS PROVIDED BY SECTION 948.09(6), FLORIDA STATUTES (1995), OR SHOULD IT BE TREATED AS A SPECIAL CONDITION THAT REQUIRES ORAL ANNOUNCEMENT?

Any requirement that a defendant pay for drug testing should continue to be treated as a special condition of probation that requires oral announcement at sentencing. Typically, the issue arises in the context where the trial court in the particular circuit is using an order of probation form other the one approved by this Court for such use. See Fla. R. Crim. P. 3.986(e). Such a form was used by the trial court in Polk County in Mr. Williams' case. (V1, R58-59). The type set probation order form contained standard or general conditions, special conditions, and several conditions that combine standard or general conditions with special conditions of probation. See § 948.03(1), Fla. Stat. (1995) in particular, and §§ 948.03-034, Fla. Stat. (1995) in general; see also Brock v. State, 688 So. 2d 909, 912 n.4 (Fla. 1996). Probation condition (8) is an example of such a standard or general condition modified by the addition of a special condition in which the Defendant, Mr. Williams, was required to pay for the costs relating to the general or standard condition. (V1, R58). See § 948.03(1)(k)1, Fla. Stat. (1995). Probation conditions (20) and (24) are examples of special conditions that combined two special conditions. Condition (20) combined evaluation and treatment for

alcohol or drug usage with a payment requirement while condition (24) combined evaluation and treatment for inpatient drug treatment with a payment requirement. (V1, R59).

In Mr. Williams' case, the trial court failed to orally announce the payment requirement related to each condition at the sentencing hearing, instead, ordering "[e]valuation, treatment, warrantless search, random urinalysis in case he has a drug problem as part of this also." (V1, R45). The written order of probation, however, provided:

> (8) You will submit to and pay for random testing as directed by the supervising officer or professional staff of the treatment center where you are receiving treatment to determine the presence of alcohol or controlled substances.
>
> ....
>
> (20) You shall submit to and pay for an evaluation to determine whether or not you have any treatable problem with (alcohol) (any illegal drugs). If you have said problem, you are to submit to, pay for, and successfully complete any recommended treatment program as a result of said evaluation, all to be completed at the discretion of your Supervising Officer.
>
> ....
>
> (24) You will obtain an evaluation to determine if you are in need of inpatient drug treatment. If so, you will enter and successfully complete, at your own expense, the recommended inpatient treatment program at DOC. You will abide by all the rules, regulations, and programs set forth by the treatment center. You will complete and pay for any aftercare treatment as recommended by the inpatient facility.

(V1, R58-59). (Emphasis added.). Each written condition, i.e., (8), (20, and (24), by form, contained a payment requirement for the Defendant, Mr. Williams, that was not announced at the sentencing hearing as required by law. See Hart v. State, 668 So. 2d 589, 591-93 (Fla. 1996). None of the written conditions, however, contained any language that referred to urinalysis testing for

determining drug usage as part of a rehabilitation program.

As to probation condition (8), the Second District Court of Appeal, in Wallace v. State, 682 So. 2d 1139 (Fla. 2d DCA 1996), ruled that requiring the defendant to pay for random testing as written in paragraph (8) above was reversible error since the payment part of the probation condition amounted to a special condition that had not been orally pronounced. In so doing, the court observed:

> The state concedes that the portion of probation condition eight which requires appellant to pay for random drug testing is a special condition of probation that must be orally pronounced at sentencing. Because it was not orally pronounced in this case, it is stricken. See Malone v. State, 652 So. 2d 902 (Fla. 2d DCA 1995); Nank v. State, 646 So. 2d 762 (Fla. 2d DCA 1994).

Wallace v. State, 682 So. 2d at 1139. Similarly, in Mr. Williams' case, the trial court failed to orally pronounce the payment requirement for the random testing and so that portion of paragraph (8) relating to payment must be stricken. (V1, R44-46, 58).

Further, no mention was made by the trial court at the sentencing hearing that Mr. Williams would be required to pay for the cost of evaluation or treatment as set out in conditions (20) and (24). (V1, R44-46, 59). The written order of probation did, however, requiring Mr. Williams to pay the cost of evaluation and treatment recommended for problems with alcohol or illegal drugs in condition (20).

The law is very well settled with respect to this issue of whether this type of condition must be orally pronounced. See Curry v. State, 682 So. 2d 1091, 1092 (Fla. 1996)(dismissing

petition that certified conflict between Curry v. State, 656 So. 2d 521, 522 (Fla. 2d DCA 1995) and Navarre v. State, 608 So. 2d 525 (Fla. 1st DCA 1992) holding that both cases were decided correctly but on different issues).

> The cases address different propositions of law that are not in conflict. The district court in Curry correctly struck that portion of the defendant's probation order that required him to pay for drug evaluation and treatment programs "because this is a special condition not announced orally" in the defendant's presence at sentencing. 656 So. 2d at 522.
>
> In contrast, the defendant in Navarre objected to a condition of probation requiring him to submit to drug evaluation and screening as not reasonably related to his second-degree murder and battery offenses. 608 So. 2d at 526. The First District affirmed the condition of probation, holding that it "is a standard condition of probation that can be imposed on any probationer, irrespective of whether it reasonably relates to the type of offense." Id. at 528. The First District was correct because such a requirement was a standard condition of probation provided for in section 948.03(1)(j), Florida Statutes (1988 Supp.). The First District did not address a "special" condition requiring the defendant to pay for his drug evaluation and treatment as did the Second District in Curry.

Curry v. State, 682 So. 2d at 1092. Likewise, in Ringling v. State, 678 So. 2d 1339 (Fla. 2d DCA 1996), the Second District Court of Appeal observed regarding a similar condition:

> 3. Alcohol/Drug Evaluation (Special condition 12: "You will submit to an alcohol and/or drug evaluation through the treatment agency to which you are referred. You will successfully complete all treatment recommended by said evaluation. You will pay any fees for evaluation, referral and treatment.")
>
> That portion of this condition which requires appellant to pay for his drug and alcohol evaluation must be stricken. Nank v. State, 646 So. 2d 762 (Fla. 2d DCA 1994). Moreover, it may not be reimposed on remand since it was not orally announced. See Justice v. State, 674 So. 2d 123 (Fla. 1996).

Ringling v. State, 678 So. 2d at 1341. Again, in Mr. Williams' case, the trial court failed to orally announce the payment requirement for evaluation and treatment for any alcohol or drug problems. Thus, that portion of paragraph (20) relating to payment must be stricken. (V1, R44-46, 59).

Finally, condition (24) required Mr. Williams to pay for evaluation to determine whether he needed inpatient drug treatment and, further, to pay for any recommended treatment and aftercare as well. Again, the law is well settled with respect to this type condition and its requirement for oral announcement. In Melton v. State, 685 So. 2d 853 (Fla. 2d DCA 1995), this Second District Court of Appeal, faced with a similar condition, made the following observation:

> The appellant challenges condition (24) of his order of probation/community control which requires him to obtain an evaluation to determine if he is in need of inpatient drug treatment and if so, to enter and successfully complete, at his own expense, the recommended inpatient treatment program and any recommended aftercare treatment. Since this is a special condition of probation which was not orally pronounced at sentencing, we strike this condition. See Williams v. State, 563 So. 2d 1129 (Fla. 4th DCA 1990). See also Pounds v. State, 661 So. 2d 312 (Fla. 2d DCA 1995).

Melton v. State, 685 So. 2d at 854. Again, in Mr. Williams' case, the trial court failed to orally announce the payment requirement for evaluation and treatment for any alcohol or drug problems. Thus, that portion of paragraph (24) relating to payment must be stricken. (V1, R44-46, 59).

Thus, plainly, in Mr. Williams' case, the trial court committed the sentencing errors outlined above with regard to

requiring the Defendant to pay for the various costs imposed in conditions (8), (20), and (24) of the trial court's written order of probation. These special condition of probation sentencing errors were properly reversed by the Second District Court of Appeal, in Williams v. State, No. 96-01923 (Fla. 2d DCA Oct. 8, 1997), and may not be reimposed on resentencing. See Justice v. State, 674 So. 2d 123 (Fla. 1996). In so doing, the Second District Court of Appeal acknowledged this Court's decision in Curry v. State, 682 So. 2d 1091 (Fla. 1996) and its own previous decisions in Wallace v. State, 682 So. 2d 1139 (Fla. 2d DCA 1996) (drug testing); Malone v. State, 652 So. 2d 902 (Fla. 2d DCA 1995) (alcohol testing).

Nevertheless, the Second District Court of Appeal appeared persuaded that Section 948.09(6), Florida Statutes (1995), providing that a defendant on supervision may be required by the Department of Corrections to pay for drug urinalysis and that the failure to pay may be considered a ground for revocation by the court, supported the conclusion that the probation condition requiring a defendant to pay for drug testing was a general condition that need not be orally announced. Williams v. State, No. 96-01923, slp op. at 1 (Fla. 2d DCA Oct. 8, 1997). Thus, the Second District Court of Appeal certified the question to this Court:

> SHOULD THE REQUIREMENT THAT A DEFENDANT PAY FOR DRUG TESTING BE TREATED AS A GENERAL CONDITION OF PROBATION FOR WHICH NOTICE IS PROVIDED BY SECTION 948.09(6), FLORIDA STATUTES (1995), OR SHOULD IT BE TREATED AS A SPECIAL CONDITION THAT REQUIRES ORAL ANNOUNCEMENT?

Id. at slp op. 2. Mr. Williams urges this Court to answer the first part of the certified question in the negative, thereby, affirming this Court's previous decision, in Curry v. State, 682 so. 2d 1091, 1092 (Fla. 1996), that requiring a defendant to pay for drug testing should be treated as a special condition of probation requiring oral announcement at sentencing. See also Brock v. State, 688 So. 2d 909, 912 (Fla. 1997).

In Petitioner's brief on the merits, Petitioner argues, in summary, that Section 948.09(6) of the Florida Statutes (1995) provides sufficient notice and authorization for requiring a defendant to pay for urinalysis to identify drug usage as a general condition of probation. Of course, the question certified to this Court was whether Section 948.09(6) of the Florida Statutes (1995) provided sufficient notice to put a defendant on constructive notice that the defendant should be required to pay for drug testing as a general condition, of probation or whether the requirement that a defendant pay for drug testing should continue to be treated as a special condition requiring oral announcement. The question certified was much broader than the question answered by Petitioner, i.e., all drug testing versus urinalysis testing. Plainly, Section 948.09(6) of the Florida Statutes (1995) did not put the Defendant, Mr. Williams, in this case, on notice that he should pay for all costs of drug testing without oral announcement. Moreover, Section 948.09(6) of the Florida Statutes (1995) did not put the Defendant, Mr. Williams, on any notice, constructive or otherwise, that he was required to pay for the costs for evaluation

for any alcohol and drug problem and any treatment program related thereto. **Nor** did Section 948.09(6) of the Florida Statutes (1995) provide any notice that the Defendant, Mr. Williams, was required to pay for the costs of evaluation for inpatient drug treatment as well as any treatment program and aftercare. Finally, Section 948.09(6) of the Florida Statutes (1995) did not put the Defendant, Mr. Williams, on notice that, as a general condition, he should be required to pay for urinalysis testing to identify drug usage as argued by Petitioner, other than as particularly set out therein the statute.

While Petitioner appears to recognize that Section 948.09(6), Florida Statutes (1995) is not a general condition of probation, Petitioner argues that it is similar to a general condition. After observing that this Court, in Curry v. State, 682 So. 2d 1091, 1092 (Fla. 1996), did determine that requiring a defendant to submit to drug evaluation and screening was a standard condition of probation as provided by Section 948.03(1) (j), Florida Statutes (Supp. 1988), Petitioner argues that Section 948.09(6), Florida Statutes (1995) provided notice to require that the Defendant, Mr. Williams, pay for urinalysis testing. Section 948.09(6), Florida Statutes (1995) provides:

> (6) In addition to any other required contributions, the department, at its discretion, may require offenders under any form of supervision to submit to and pay for urinalysis testing to identify drug usage as part of the rehabilitation program. Any failure to make such payment, or participate, may be considered a ground for revocation by the court, the Parole Commission, or the Control Release Authority, or for removal from the pretrial intervention program by the state attorney. The department may exempt a person from such payment if it

> determines that any of the factors specified in subsection (3) exist.

§ 948.09(6), Fla. Stat. (1995). Thus, Petitioner submits that conditions (8), (20), and (24), insofar as they involve urinalysis testing for drug usage are general conditions of probation that need not be orally announced at sentencing. See Petitioner's Brief on the Merits at 6, State v. Williams, (No. 91,655).

In making this quantum leap of logic, Petitioner relies on Hart v. State, 668 So. 2d 589, 592 (Fla. 1996), to support the proposition that general conditions of probation are those contained within the statutes, presumably including section 948.09(6), Florida Statutes (1995), albeit, Petitioner chooses to omit material citations in doing so. See Petitioner's Brief on the Merits at 7, Williams, (No. 91,655). Interestingly, the passage from Hart quoted by Petitioner, with citations not omitted, stands for the proposition that "a condition of probation that is statutorily authorized or mandated, see, e.g., sections 948.03-.034, Florida Statutes (1993), may be imposed and included in a written order of probation even if not orally pronounced at sentencing" since "the statute provides 'constructive notice of the condition which together with the opportunity to be heard and raise any objections at a sentencing hearing satisfies the requirements of procedural due process.'" Hart v. State, 668 so. 2d at 592 (citing Nank v. State, 646 So. 2d 762, 763 (Fla. 2d DCA 1994) wherein the Second District Court of Appeal quoted Tillman v. State, 592 So. 2d 767, 768 (Fla. 2d DCA 1992)).

Further, Petitioner mistakenly asserts that the Second

District Court of Appeal recognized the validity of Petitioner's argument in regard to payment for urinalysis testing for drugs in the case of Johnson v. State, 696 So. 2d 831 (Fla. 2d DCA 1997). Petitioner asserts that the court in Johnson struck only that portion of the condition requiring payment for breathalyzer or blood testing to determine the presence of alcohol because that portion of the condition was not enumerated in the statutory conditions of probation. Actually, in Johnson, the Second District Court of Appeal stated:

> (PER CURIAM.) Michael Johnson appeals his convictions and sentences to aggravated assault and aggravated battery on a pregnant woman. We strike the part of condition twelve of Mr. Johnson's probation order that requires him to pay for breathalyzer or blood testing to determine the presence of alcohol because such requirement is not enumerated in the statutory conditions of probation, and the trial court did not pronounce this aspect of the condition of sentencing. See §§ 948.03(1)(k), 948.09(6), Fla. Stat. (1995); Kopecki v. State, 670 So. 2d 1066 (Fla. 2d DCA 1995).

Johnson v. State, 696 So. at 831. Plainly, the Johnson opinion did not contain any language regarding urinalysis and, arguably, does not stand for the proposition represented to this Court by Petitioner. Rather, the Johnson opinion, if of any value as precedent, appears to support the proposition that requiring a defendant to pay for drug testing, i.e., breathalyzer and blood testing, is a special condition of probation requiring oral announcement at sentencing. Additionally, as the Johnson opinion recognized, urinalysis is not the only type of drug testing. See also Fla. R. Crim. P. 3.986(e) special conditions.

Finally, Petitioner appears to recognize that this Court, in

Brock, 688 so. 2d 909 (Fla. 1997), stated that requiring a defendant to pay for drug testing was a special condition of probation that lacks statutory authorization and, therefore, must be orally pronounced at sentencing. See Brock v. State, 688 So. 2d 909, 912 (Fla. 1997), in footnote 4, wherein this Court observed:

> FN4. Brock does not contest that the new condition imposing random drug and alcohol testing was a statutorily authorized, i.e., "general" condition, as opposed to a special condition, of community control. See also Hart, 668 so. 2d at 592 (stating that "standard or general conditions" are those contained in sections 948.03-.34, Florida Statutes). In Hart, we held that those general conditions, contained in conditions one to eleven in the untitled section of the Form for Order of Probation, rule 3.986(e), Florida Rules of Criminal Procedure, did not require oral pronouncement at sentencing since they "provide the same type of notice as the probation conditions set forth in the Florida Statutes." Id. at 593. Indeed, those conditions "contain most of the statutory conditions of probation as well as other provisions which apply to most orders of probation." Id. at 592.
>
> However, for purposes of clarity, we note that some conditions of probation listed under the "SPECIAL CONDITIONS" portion in rule 3.986(e) contain statutory authorization. Under our reasoning in Hart, any such conditions need not be orally pronounced at sentencing to be held valid. But, if any portion of the special condition lacks statutory authorization, such as the requirement in the second special condition that probationer "pay for the [drug] tests," it must be pronounced orally at sentencing to give the defendant sufficient notice of the substance of the condition and the opportunity to object. Fla. R. Crim. P. 3.986(e). Thus, in that situation, the preferred practice is for the trial court to pronounce in full at sentencing any special conditions of probation and/or community control even if portions thereof contain statutory authorization.

Brock v. State, 688 So. 2d at 912 n.4. Undeterred, Petitioner points out that this Court appeared not to have been apprised of the fact that Section 948.09(6), Florida Statutes (1995) specifically authorized urinalysis drug testing. Accordingly, Petitioner

urges this Court to affirm conditions (8), (20), and (24) as general conditions of probation in as far as they require the Defendant to pay for urinalysis testing for drug usage.

Petitioner's argument is flawed in several respects. Most important, however, Petitioner fails to address the certified question; that is, whether Section 948.09(6), Florida Statutes (1995) provides constructive notice that a defendant be required to pay for drug testing, presumably all drug testing, including but not limited to urinalysis, such that oral announcement at sentencing is not required? As noted above, Mr. Williams' answer to that question is an unequivocal no. The reason is simply that drug testing broadly encompasses more testing than just urinalysis testing, i.e., breathalyzer testing and blood testing, for example, to name the most obvious other types of testing that a defendant on probation may have imposed. Moreover, Section 948.09(6), Florida Statutes (1995) does not provide any notice, constructive or otherwise, for requiring a defendant pay for the costs associated with evaluation and treatment for alcohol or drug problems or with evaluation for inpatient drug treatment as well as inpatient treatment programs and aftercare. Thus, Petitioner's brief on the merits is fatally flawed by not addressing the precise issue presented by the certified question. Nevertheless, Section 948.09(6), Florida Statutes (1995) does not provide notice that a defendant must pay for drug testing.

Additionally, Petitioner's brief is flawed in submitting that Section 948.09(6), Florida Statutes (1995) provided notice that the

Defendant, Mr. Williams, was required to pay for urinalysis testing such that probation conditions (8), (20), and (24), "insofar as they involved urinalysis testing for drug usage, were general conditions of probation that did not need to be orally announced at sentencing." See Petitioner's Brief on the Merits at p. 6 Williams, (91,655). Section 948.09(6), Florida Statutes (1995) provides notice that "the department, at its discretion, may require offenders under any form of supervision to submit to and pay for urinalysis testing to identify drug usage as part of the rehabilitation program." See § 948.09(6), Fla. Stat. (1995). Even the standard or general condition that requires a defendant to "[s]ubmit to random testing as directed by the correctional probation officer or the professional staff of the treatment center where he or she is receiving treatment to determine the presence or use of alcohol or controlled substances" is not limited to just urinalysis testing by its terms and, thus, neither Mr. Williams nor any other defendant was nor is on any constructive notice provided by Section 948.09(6), Florida Statutes (1995) that he must pay for the cost of the random drug testing. See §§ 948.03(1)(k)l, 948.09(6), Fla. Stat. (1995). See Johnson v. State, 696 So. 2d 831 (Fla. 2d DCA 1997; Fla. R. Crim. P. 3.986(e) special conditions.

Additionally, the plain language of Section 948.09(6), Florida Statutes (1995) provides only that "the department, at its discretion, may require offenders under any form of supervision to submit to and pay for urinalysis testing to identify drug usage as part of the rehabilitation program." § 948.09(6), Fla. Stat.

(1995). Also, "[t]he department may exempt a person from such payment if it determines that any of the factors specified in subsection (3) exist." § 948.09(6), Fla. Stat. (1995); see also § 948.09(3), Fla. Stat. (1995) as to a list of seven factors that the Department may consider when determining whether to exempt a person from payment for urinalysis testing. The plain language of the penal statute is by its own terms discretionary, not mandatory, and must be strictly construed as such. Presumably, Section 948.09(6), Florida Statutes (1995) is a penal statute that must be strictly construed. See Hewitt v. State, 613 So. 2d 1305 (Fla. 1993) wherein this Court, considering § 948.06(4), Fla. Stat. (1991), observed that "[u]nder Florida law, penal statutes such as the one at issue here must be strictly construed. Art. I, § 9, Fla. Const.; see Jeffries v. State, 610 So. 2d 440 (Fla. 1992); Perkins v. State, 576 So. 2d 1310 (Fla. 1991)." Hewitt v. State, 613 So. 2d at 1306. Thus, the discretion, statutorily granted to the Department of Corrections regarding the use of and payment for urinalysis testing to identify drug usage as part of the rehabilitation program, must not be construed to provide notice that a defendant shall be required to pay for costs associated with urinalysis testing under any and all conditions of probation imposed by the trial court. Also, the discretion, statutorily granted to the Department of Corrections regarding the use of and payment for urinalysis testing to identify drug usage as part of the rehabilitation program, must not be construed to provide notice that a defendant shall be required to pay for costs associated with

all drug testing, including but not limited to urinalysis, i.e., breathalyzer tests and blood tests. Further, the discretion, statutorily granted to the Department of Corrections regarding the use of and payment for urinalysis testing to identify drug usage as part of the rehabilitation program, must not be construed to provide notice that a defendant shall be required to pay the costs associated with evaluation and treatment of any alcohol or drug problems as well as the costs associated with evaluation for inpatient drug treatment, any inpatient drug treatment, or aftercare.

Finally, Petitioner's suggestion that this Court was somehow not apprised that Section 948.09(6), Florida Statutes (1995) specifically authorized urinalysis drug testing is remarkable considering that the section does not authorize urinalysis drug testing in the broad sense argued by Petitioner or in the even broader sense implied by the certified question as to all drug testing, including but not limited to urinalysis. One of the special conditions of probation included in Rule 3.986(e), Florida Rules of Criminal Procedure, provides that:

> [y]ou will submit to urinalysis, breathalyzer, or bloodtests 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.

Fla. R. Crim. P. 3.986(e). Comparing the provision above, as promulgated by this Court, with Section 948.09(3) and (6) leads to the conclusion, contrary to Petitioner's suggestion, that this

Court **was** aware of the statutory authorization giving the Department of Corrections discretion to use and require payment for urinalysis testing to identify drug usage **as** part of the rehabilitation program at the time that the Court decided Brock as well **as** Curry, and Hart, for that matter. "In 1992, the order of probation form was added to rule 3.986. See In re Amendments to the Florida Rules of Criminal Procedure--Rules 3.140 and 3.986, 603 So. 2d 1144 (Fla. 1992)." See Hart v. State, 668 So. 2d at 392; see also § 945.30(4), Fla. Stat. (1991) subsequently renumbered § 948.09(6), Fla. Stat. (Supp. 1992) containing similar language authorizing the Department of Corrections discretion to use **and** require payment for urinalysis testing. Thus, Petitioner's suggestion that this Court was unapprised of the statutory authorization for urinalysis testing contained in § 948.09(6), Fla. Stat. (1995) and the implication that but for the Court being unaware of that existing statutory authorization for urinalysis testing, Brock and Curry, would have been decided differently, is simply without merit.

Thus, Petitioner's contention that probation conditions (8), (20), and (24), "insofar as they involve urinalysis testing for drug usage, are general conditions of probation that need not be orally announced at sentencing" is without merit. Similarly, without merit is Petitioner's conclusion that the requirement that Mr. Williams pay for testing to identify drug usage was a general condition of probation, for which sufficient notice and authorization had been provided by Section 948.09(6), Florida Statutes (1995) such that oral announcement was unnecessary. Therefore,

this Court should affirm the Second District Court of Appeal's order reversing, in part, the trial court's sentencing order and remanding for proceedings consistent therein, including but not limited to striking the payment requirements in probation conditions (8), (20), and (24) as special conditions not orally announced. See Williams v. State, No. 96-01923, slp op. at 1-2 (Fla. 2d DCA Oct. 8, 1997).

CONCLUSION

Based on the foregoing facts, arguments, and citation of authorities, Mr. Williams, respectfully requests that this Honorable Court affirm the Second District Court of Appeal's order striking portions of special conditions contained in the written order of probation entered by the trial court.

CERTIFICATE OF SERVICE

I certify that a copy has been mailed to John M. Klawikofsky, Suite 700, 2002 N. Lois Ave., Tampa, FL 33607, (813) 873-4739, on this 2nd day of December, 1997.

Respectfully submitted,

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