

IN THE SUPREME COURT OF FLORIDA

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FILED

SID J. WHITE

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STATE OF FLORIDA,

Petitioner,

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

v.

FSC No. 91,655

2d District No. 96-01923

CHUCK JUNIOR WILLIAMS,

Respondent.

DISCRETIONARY REVIEW OF A DECISION OF
THE DISTRICT COURT OF APPEAL SECOND DISTRICT

BRIEF OF PETITIONER ON THE MERITS

ROBERT A BUTTERWORTH
ATTORNEY GENERAL

ROBERT J. KRAUSS
Senior Assistant Attorney General
Chief of Criminal Law, Tampa
Florida Bar No. 0238538

JOHN M. KLAWIKOFSKY
ASSISTANT ATTORNEY GENERAL
Florida Bar No. 0930997

RONALD NAPOLITANO
Assistant Attorney General
Florida Bar No. 175130
Westwood Center
2002 North Lois Avenue, Suite 700
Tampa, Florida 33607
(813) 873-4739

COUNSEL FOR PETITIONER

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INTRODUCTION

Petitioner, THE STATE OF FLORIDA, was the prosecution in the trial court and Appellee in the District Court of Appeal of Florida, Second District. Respondent, Chuck Junior Williams, was the defendant in the trial court and the Appellant in the District Court of Appeal. The symbol "R" designates the original record on appeal. The symbol "T" designates the transcript of the trial before the court.

STATEMENT OF THE CASE AND FACTS

The respondent, Appellant down below, appealed his convictions and sentences for trafficking in methamphetamine, possession of cocaine, and possession of alprazolam. The convictions were affirmed without discussion. However, the Second District reversed portions of the sentence dealing with a failure to orally pronounce Conditions of Probation numbered 8, 20 and 24. Williams v. State, (Slip op. at 2 (Fla. 2d DCA October 8, 1997)).

The Conditions are as follows:

8. You will submit to and pay for random testing as directed by the supervision 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 drug). 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 direction of your Supervision 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.

(R. 58-59).

The court held that requiring a defendant to pay for alcohol or drug testing is a special condition of probation which must be announced at sentencing. However, the Court acknowledged that Section 948.09(6), Florida Statutes (1995) provides that a defendant on supervision may be required by the Department of Corrections to pay for drug urinalysis. The Court determined this provision supports a conclusion that requiring payment for drug testing is a general condition that need not be orally announced. The Second District held that the conditions were special conditions, reversed the sentence in part, but certified the following question:

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?

The State filed a Notice to Invoke Discretionary Jurisdiction on October 17, 1997. On October 29, 1997, this Court postponed its decision on jurisdiction.

SUMMARY OF THE ARGUMENT

The requirement that appellant pay for urinalysis testing to identify drug usage is a general condition of probation, for which sufficient notice and authorization is provided by Section 948.09(6), Fla. Stat. (1995). Therefore, such general condition need not be orally announced at sentencing.

ARGUMENT

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?

This Court and the Second District Court of Appeal have determined that requiring a defendant to pay for drug testing constitutes a special condition of probation because it is not authorized by statute. Brock v. State, 688 So. 2d 909, at n. 4 (Fla. 1997); Curry v. State, 682 So. 2d 1091 (Fla. 1996); Malone v. State, 652 So. 2d 902 (Fla. 2d DCA 1995).

In Curry, supra, this Court struck the portion of the probation order requiring the defendant to pay for drug evaluation and treatment programs "because this is a special condition not announced orally" at sentencing. In Curry, this Court did not address section 948.09(6), Fla. Stat. (1995) as providing a sufficient statutory basis for making payment for drug testing a general condition of probation. However, this Court did determine that a condition requiring a defendant to submit to drug evaluation and screening was a standard condition of probation as provided in Section 948.03(1)(j), Fla. Stat. (1988 Supp.).

Section **948.09(6)**, Fla. Stat. (1995) similarly provides notice to require a defendant to pay for urinalysis testing. Section **948.09(6)**, Fla. Stat. (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 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.

(emphasis added).

Accordingly, the State submits that conditions **(8)**, **(20)**, and **(24)**, insofar **as** they involve urinalysis testing for drug usage, are general conditions of probation which need not be orally announced at sentencing.

The Second District 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). In Johnson, this court struck only that portion of the condition requiring payment for **breathalyser or blood testing** to determine the presence of **alcohol** because that portion of the condition was

not enumerated in the statutory conditions of probation. The court cited to Section **948.03(1)** (k) (Submit to random testing as directed by the correctional probation officer or the professional staff of the treatment center where he is receiving treatment to determine the presence of alcohol or controlled substances) and Section **948.09(6)** (payment for urinalysis testing to determine drug usage)

Petitioner submits that Section **948.09(6)**, Fla. Stat. (1995) specifically authorizes that a defendant under any form of supervision may be required to submit to ***and pay for urinalysis testing to identify drug usage as part of any rehabilitation program.*** Moreover, this Court in Hart v. State, 668 So.2d 589, 592 (Fla. 1996) stated as follows:

It has been held that the usual "general conditions" of probation are those contained within the statutes.. (Citation omitted). In other words, a condition of probation which is statutorily authorized or mandated...may be imposed and included in a written order of probation even if not orally pronounced at sentencing. (Citation omitted). "The legal underpinning of this rationale is that the statute provides 'constructive notice of the condition which together with the opportunity to be heard and raise any objections at the sentencing hearing satisfies the conditions of procedural due process.'"

Therefore, this **Court** should hold that the requirement that the appellant pay for urinalysis testing to identify drug usage is a

general condition of probation. Petitioner recognizes that this Court in Brock, susra stated that requiring a defendant to pay for drug testing is a special condition of probation which lacks statutory authorization and therefore must be orally pronounced at sentencing. However, Petitioner would point out that it does not appear that this Court was apprised of the fact that Section 948.09(6) specifically authorized urinalysis drug testing.

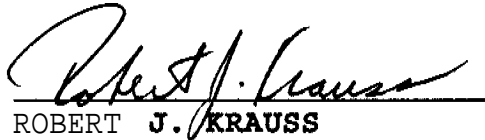
Accordingly, this Court should affirm conditions 8, 20, and 24, as general conditions of probation, in so far as they relate to requiring the defendant to pay for urinalysis testing for drug usage.

CONCLUSION

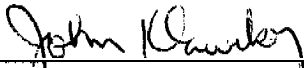
In light of the foregoing facts, arguments, and citation of authority, Petitioner respectfully requests that this Honorable Court affirm the judgment and sentence of the trial court.

Respectfully Submitted

ROBERT A. BUTTERWORTE
ATTORNEY GENERAL



ROBERT J. KRAUSS
Senior Assistant Attorney General
Chief of Criminal Law, Tampa
Florida Bar No. 0238538
Westwood Center, Suite 700
2002 North Lois Avenue
Tampa, Florida 33607-2366
(813) 873-4739



JOHN M. KLAWIKOFSKY
Assistant Attorney General
Florida Bar No, 930997
Westwood Center, Suite 700
2002 North Lois Avenue
Tampa, Florida 33607-2366
(813) 873-4739

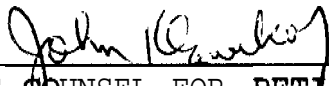


RONALD NAPOLITANO
Assistant Attorney General
Florida Bar No. 175130
Westwood Center, Suite 700
2002 North Lois Avenue
Tampa, Florida 33607-2366
(813) 873-4739

COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Richard P. Albertine Esquire, Public Defender's Office, Criminal Justice Center, 14250 49th Street, Clearwater, Florida 34622 on this 12th day of November 1997.



OF COUNSEL FOR PETITIONER