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SID J. WHITE

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CLERK, SUPREME COURT

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IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,)
)
 Petitioner,)
)
 vs.)
)
 REPOLEON PORCHIA,)
)
 Respondent.)
 _____)

CASE NO. 92,657

ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

RESPONDENT'S ANSWER BRIEF

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

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COUNSEL FOR PETITIONER

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OTHER AUTHORITIES CITED:

Section 948.09(6), Florida Statutes

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IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,)
)
 Petitioner,)
)
vs.)
)
STATE OF FLORIDA,)
)
 Respondent.)
_____)

CASE NO. 92,657

STATEMENT OF CASE AND FACTS

Respondent accepts Petitioner's statement of case and facts.

SUMMARY OF ARGUMENT

Condition 11 of respondent's order of probation is not a general condition authorized by section 948.09(6), Florida Statutes. Section 948.09(6) allows the Department of Corrections, at its discretion, to require a probationer to pay for urinalysis. If the statutory language is clear, this court must apply the statute as it was intended and may not supply its own interpretation. The language of section 948.09(6) is clear and unambiguous. It requires a probationer to pay for urinalysis; it does not authorize the department to require payment for breathalyser or blood tests.

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?

Condition 11 of the order of probation provides:

You will submit to urinalysis, breathalyser or blood test at any time requested by your Probation or Community Control 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 such tests unless payment is waived by your officer.

R. 95.

This court has consistently held that a probation condition requiring a defendant to pay for drug testing is a special condition that must be orally pronounced. Justice v. State, 674 So. 2d 123, 125 (Fla. 1996) (any condition of probation not contained in paragraphs one through eleven of the Rule 3.986(e) form or in the Florida Statutes on probation must be orally pronounced and imposed at sentencing); Curry v. State, 682 So. 2d 1091 (Fla. 1996) (district court correctly struck that portion of the probation order that required defendant to pay for drug evaluation and treatment programs); State v. Hart, 668 So. 2d 589, 592 (Fla. 1996) (all defendants are on constructive notice

of conditions one through eleven; special conditions not set out in the general conditions must be specifically pronounced at sentencing). In Brock v. State, 668 So. 2d 909, n. 4 (Fla. 1997), this court noted that the special conditions under Rule 3.896(e) contain some statutory authorization, but stated that if any portion of the special condition lacks statutory authorization, such as the requirement that a probationer pay for the tests, it must be pronounced orally at sentencing.

Petitioner acknowledges that condition 11 of respondent's order of probation is contained in the special conditions section of Rule 3.896(e), but argues that the condition is a general condition authorized by section 948.09(6), Florida Statutes (1995), and, therefore, need not be orally pronounced. Section 948.09(6) provides:

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.
[Emphasis supplied.]

Petitioner is asking this court to expand section 948.09(6) to include payment for breathalyser and blood tests. In construing a statute, the court must first attempt to ascertain the legislative intent from the language of the statute


itself. Baker v. State, 636 So. 2d 1342 (Fla. 1994). If the language is clear, the court must apply the statute as it was intended and may not supply its own interpretation. The court may properly resort to extrinsic aids and various rules of statutory construction to determine the intent of the legislature only if the applicability of the statute is not clear. Holly v. Auld, 450 So. 2d 217 (Fla. 1984). The language of section 948.09(6) is clear and unambiguous. It requires a probationer to pay for urinalysis; it does not authorize the department to require payment for breathalyser or blood tests.

CONCLUSION

Based upon the authorities cited and the argument presented, this court should treat the condition that a defendant pay for drug testing as a special condition of probation that requires oral pronouncement.

Respectfully submitted,

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

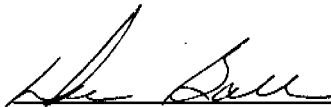


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been hand delivered to the Honorable Robert A. Butterworth, Attorney General, 444 Seabreeze Boulevard, 5th Floor, Daytona Beach, FL 32118 via his basket at the Fifth District Court of Appeal and mailed to Mr. Repoleon Porchia, #E02342, Brevard Correctional Institution, P.O. Box 340, Sharpes, FL 32959, this 12th day of May, 1998.



DEE BALL
ASSISTANT PUBLIC DEFENDER