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**FILED**  
SID J. WHITE  
APR 23 1998

IN THE SUPREME COURT OF FLORIDA

CLERK, SUPREME COURT  
By \_\_\_\_\_  
Chief Deputy Clerk

STATE OF FLORIDA,  
Petitioner,

v.

Case No. 92,657

REPOLEON PORCHIA,  
Respondent.

\_\_\_\_\_ /

ON DISCRETIONARY REVIEW FROM  
THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA,  
FIFTH DISTRICT

MERITS BRIEF OF PETITIONER

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TABLE OF CONTENTS

TABLE OF CONTENTS . . . . .	ii
TABLE OF AUTHORITIES. . . . .	iii
STATEMENT OF THE CASE AND FACTS . . . . .	1
SUMMARY OF ARGUMENT . . . . .	3
ARGUMENT . . . . .	4
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? . . . . .	4
CONCLUSION . . . . .	7
CERTIFICATE OF SERVICE . . . . .	7

TABLE OF AUTHORITIES

CASES

Brock v. State,  
688 So. 2d 909 (Fla. 1997) . . . . . 5,6

Curry v. State,  
682 So. 2d 1091 (Fla. 1996) . . . . . 4

Huff v. State,  
700 So. 2d 787 (Fla. 2nd DCA 1997),  
rev. granted, State v. Huff, No. 91,655 (Fla. 1998) . . . . . 4

Jackson v. State,  
685 So. 2d 1386 (Fla. 5th DCA 1997) . . . . . 4

Justice v. State,  
674 So. 2d 123 (Fla. 1996) . . . . . 4

Porchia v. State,  
22 Fla. L. Weekly D2719 (Fla. 5th DCA December 5, 1997) . . . . . 1,4

Porchia v. State,  
23 Fla. L. Weekly D460 (Fla. 5th DCA February 13, 1998) . . . . . 1,4

Smith v. State,  
702 So. 2d 1305 (Fla. 2nd DCA 1997),  
rev. granted, State v. Smith, No. 91,852 (Fla. 1998) . . . . . 4

State v. Hart,  
668 So. 2d 589 (Fla. 1996) . . . . . 5

Williams v. State,  
700 So. 2d 750 (Fla. 2nd DCA 1997),  
rev. granted, State v. Williams, No. 91,655 (Fla. 1998) . . . . . 4

OTHER AUTHORITY

Section 948.09(6), Florida Statutes (1995) . . . . . 3,4,5,6

Florida Rule of Criminal Procedure 3.986(e) . . . . . 5,6

STATEMENT OF THE CASE AND FACTS

Respondent was found guilty of robbery with a weapon and was sentenced as a youthful offender to incarceration for four years followed by two years of probation. (R 89, 93) Respondent appealed, challenging the imposition of several conditions of the probation order. Condition eleven, one of those challenged, reads:

You will submit to urinalysis, breathalyzer, 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) The Fifth District Court of Appeal affirmed the judgment, sentence and the probation order, except for the portion of condition eleven requiring Respondent to pay for random drug testing. Porchia v. State, 22 Fla. L. Weekly D2719 (Fla. 5th DCA December 5, 1997). The district court struck the provision because the trial court failed to announce this condition at sentencing. Id.

The State timely moved for rehearing/certification solely on the issue of whether the trial court must orally announce at sentencing the condition requiring the probationer to pay for random drug testing. The Fifth District Court of Appeal granted rehearing on February 13, 1998 and substituted an opinion that reaffirmed its previous decision and certified the following question as one of great public importance:

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?

Porchia v. State, 23 Fla. L. Weekly D460 (Fla. 5th DCA February  
13, 1998). Mandate issued March 4, 1998. On Monday, March 12,  
1998, the State filed a notice to invoke this Court's  
discretionary jurisdiction.

SUMMARY OF ARGUMENT

This Court has held that statutorily based conditions of probation, including those labeled as special conditions, do not have to be orally pronounced at sentencing to remain valid. The requirement that probationers submit to and pay for drug testing is authorized under section 948.09(6) of the Florida Statutes. Therefore, a trial court is not required to announce the imposition of this condition at sentencing for it to be upheld.

ARGUMENT - CERTIFIED 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?

Condition eleven of the probation order in the instant case required Respondent to pay for random drug testing during his period of supervision. (R 95) The district court struck this requirement, holding that this condition must be orally announced to be imposed. Porchia v. State, 22 Fla. L. Weekly D2719 (Fla. 5th DCA December 5, 1997). In reaching its decision, the court cited to Justice v. State, 674 So. 2d 123 (Fla. 1996) and Jackson v. State, 685 So. 2d 1386 (Fla. 5th DCA 1997). Upon the State's motion for rehearing, the court certified the above question. Porchia v. State, 23 Fla. L. Weekly D460 (Fla. 5th DCA February 13, 1998).

Petitioner notes that the Fifth District's ruling is in line with the general consensus among the courts of this State with regard to the status of this particular condition of probation. E.g. Curry v. State, 682 So. 2d 1091 (Fla. 1996).<sup>1</sup> However,

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<sup>1</sup>The Second District has recently acknowledged the State's position that section 948.09(6) supports the conclusion that oral pronouncement is not required to validly impose this condition, although it elected to follow its prior decisions in striking this condition where there was no oral pronouncement. In three cases, the court certified the instant question. Williams v. State, 700 So. 2d 750 (Fla. 2nd DCA 1997), rev. granted, State v. Williams, No. 91,655 (Fla. 1998); Huff v. State, 700 So. 2d 787 (Fla. 2nd DCA 1997), rev. granted, State v. Huff, No. 91,655 (Fla. 1998); Smith v. State, 702 So. 2d 1305 (Fla. 2nd DCA 1997), rev. granted, State v. Smith, No. 91,852 (Fla. 1998).

these cases all fail to account for direct statutory authority for this condition contained in section 948.09(6) of the Florida Statutes. This statutory authority obviates the requirement for oral pronouncement of the condition at sentencing under Brock v. State, 688 So. 2d 909 (Fla. 1997).

The condition requiring payment for drug testing is listed as a special condition under Florida Rule of Criminal Procedure 3.986(e). Special conditions generally must be announced at sentencing because due process requires that a defendant be afforded the opportunity to object to the imposition of these conditions. See State v. Hart, 668 So. 2d 589, 591-592 (Fla. 1996). But this requirement does not apply to conditions authorized or mandated by statute. This Court has recently ruled that statutorily authorized conditions do not require oral pronouncement because the statutes provide adequate notice to satisfy due process concerns. Brock v. State, 688 So. 2d 909, n.4 (Fla. 1997). This rule still applies to those conditions labeled as special conditions. Id.

Based on the above caselaw, the issue becomes whether or not there is statutory authorization for this Rule 3.986(e) "special condition". Section 948.09 of the Florida Statutes addresses the subject of payment for the costs when a defendant is under supervision. Subsection (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 added). A defendant's failure to comply with this statute may result in a revocation of probation. Id. This is direct statutory authorization for the requirement that the probationer to pay for drug testing. Therefore, even though this condition requiring payment for drug testing is listed as a special condition under Rule 3.986(e), oral pronouncement is not required under Brock.


It follows that payment for drug testing should be treated as a general condition of probation as it authorized by statute. Petitioner asks this Court to hold that the requirement that a defendant pay for drug testing be treated a general condition of probation not requiring oral pronouncement at sentencing. Petitioner furthers request this Court to remand the case for the reimposition of this condition of probation.

CONCLUSION

Based on the foregoing arguments and authorities, Petitioner respectfully requests that this Honorable Court hold that the requirement that a defendant pay for drug testing be treated as a general condition of probation that does not require oral announcement and remand for reimposition of the condition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand-delivery to James B. Gibson, Public Defender, Seventh Judicial Circuit at 112 Orange Avenue, Suite A, Daytona Beach, Florida 32114, via his basket at the Fifth District Court of Appeal, this 22nd day of April, 1998.

  
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