

IN THE SUPREME COURT OF FLORIDA

FILED

SID J. WHITE

JUN 8 1998

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

REPLY BRIEF OF PETITIONER

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TABLE OF CONTENTS

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES. iii

SUMMARY OF ARGUMENT 1

ARGUMENT 2

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? 2

CONCLUSION 4

CERTIFICATE OF SERVICE 4

TABLE OF AUTHORITIES

CASES

Brock v. State,
688 So. 2d 909 (Fla. 1997) 4

State v. Hart,
668 So. 2d 589 (Fla. 1996) 3

OTHER AUTHORITY

Section 948.09, Florida Statutes (1995) 3,4

Section 948.03, Florida Statutes (1995) 3

SUMMARY OF ARGUMENT

Section 948.09(6), Florida Statutes requires probationers to pay for the costs of monitoring their drug usage. Although only payment for urinalysis is specifically mentioned, the statute provides adequate notice that probationers are required to pay for drug testing.

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?

In its Initial Brief, Petitioner asserted that section 948.09(6) provided statutory authorization for the condition of probation requiring the offender to pay for the costs of drug testing. Consequently, oral announcement of this condition at sentencing was not mandated. Respondent answered by noting that section 948.09(6) only requires that a probationer pay for the costs of urinalysis testing. Respondent argues that since there is no statutory authority requiring the payment for other forms of drug testing, the condition requiring Respondent to generally pay for drug testing is a special condition that requires oral pronouncement.

Petitioner responds that section 948.03, Florida Statutes (1995) places probationers on notice that they are required to submit to general random drug testing. Section 948.09 requires offenders to pay for the various costs of supervision and rehabilitation. Subsection six highlights the fact that these costs include the payment for testing to identify drug usage. Although the subsection specifies urinalysis, section 948.09 provides sufficient general notice to offenders that they are obligated to pay for drug testing, satisfying the due process concerns discussed in State v. Hart, 668 So. 2d 589 (Fla. 1996)

and Brock v. State, 688 So. 2d 909 (Fla. 1997) Oral announcement should not be required to impose this condition. On remand, the condition should be reimposed.

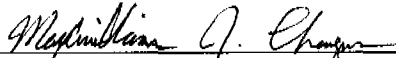
If this Court holds that section 948.09(6) is not adequate statutory authorization and that this condition is to be treated as a special condition, Petitioner would ask the Court to remand the case to allow the trial court to reimpose the condition to the extent that Respondent is required to pay for the costs of urinalysis testing.

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 2nd day of June, 1998.


MAXIMILLIAN J. CHANGUS
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