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DEBBIE CAUSSEAU

AUG 09 1999

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IN THE SUPREME COURT OF FLORIDA

**ORIGINAL**

ROBERT L. STURGIS, )  
)  
Petitioner, )  
)  
vs. )  
)  
STATE OF FLORIDA, )  
)  
)  
Respondent. )  
\_\_\_\_\_ )

5<sup>th</sup> DCA Case No. 98-1291

Supreme Court Case No.

96, 210

**PETITIONER'S BRIEF ON JURISDICTION**

JAMES B. GIBSON  
PUBLIC DEFENDER  
SEVENTH JUDICIAL CIRCUIT

M. A. LUCAS  
ASSISTANT PUBLIC DEFENDER  
FLORIDA BAR NO. 0658286  
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ATTORNEY FOR PETITIONER

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## TABLE OF CITATIONS

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24 Fla. L. Weekly D1017 (Fla. 5th DCA April 23, 1999)

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Sturgis v. State

24 Fla. L. Weekly D 1509 (Fla. 5th DCA June 25, 1999)

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### OTHER AUTHORITIES CITED:

Section 775.084, Florida Statutes

2

Section 810.02(3), Florida Statutes

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IN THE DISTRICT COURT OF APPEAL, FIFTH DISTRICT  
OF THE STATE OF FLORIDA

ROBERT L. STURGIS, )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 STATE OF FLORIDA, )  
 )  
 Respondent. )  
\_\_\_\_\_ )

5<sup>th</sup> DCA Case No. 98-1291

Supreme Court Case No.

\_\_\_\_\_

**STATEMENT OF THE CASE AND FACTS**

An Information was filed on December 11, 1997, charging Appellant with burglary of an occupied structure, a second degree felony, in violation of Section 810.02(3), Florida Statutes. (R 21) The information alleged that on December 3, 1997, Appellant entered unlawfully a residence located at 136 Bethune Village, without the consent of the owner, which structure was occupied by a human being at the time. (R 21)

On March 19, 1998, defense counsel filed a 'Motion to Find the "Prison Releasee Reoffender" Statute, F. S. 775.082(8) (1997) Unconstitutional.' (R 37-38)

The case proceeded to trial on March 20, 1998, before the Honorable S. James Foxman, Circuit Court Judge of the Seventh Judicial Circuit, in and for Volusia County, Florida. (T 1-95) At the close of the State's case, defense counsel

moved for a judgment of acquittal. (T 50) The trial court denied the motion. (T 50) After deliberations, the jury returned a verdict of guilty as charged in the information. (T 92-93, R 44)

On April 6, 1998, the State filed a "Notice of Classifying Defendant as a Prisoner Releasee Reoffender". (R 50-60)

A sentencing hearing was held on May 7, 1998 before Judge Foxman. (R 1-18) Defense counsel objected to sentencing Appellant pursuant to the Prison Releasee Reoffender, Florida Statute, Section 775.084, arguing that it was unconstitutional. Defense counsel also argued that Appellant never received notice either actual or written regarding the Statute. (R 2-3) Appellant's sentencing guidelines scoresheet total resulted in a minimum state prison months of 60 and a maximum state prison months of 100. (R 48) The trial court stated:

"...I've been thinking about it a lot. I think, technically, from a technical standpoint, the PRR statute is constitutional. I have grave misgivings with it and I do think that it takes away the discretion of the judge completely, and I understand the Lake City judge's frustration with it. I shared such frustration when we first had sentencing guidelines. But I think the Legislature has the right to do this and I also think that their stated purpose of going after the recidivists, the people that get out of prison and still commit crimes, is a legitimate public purpose and it serves that purpose well. I do have a lot of difficulty with the actual sentence here, because I think it is a little bit of an overkill. I think that the defense attorney is right. I think,

frankly, Mr. Sturgis is more of a harm to himself and a threat to himself than he is to the rest of us, and I think that some type of habitualization with a slightly less prison sentence would serve all of us just as well. He's a walking, talking crack addict.

\* \* \*

The Court: I can't give it to you, my hands are tied; the Legislature has seen to that. And, like I said, the sentence wouldn't be this but for that statute and I can't blame the public or the legislature for the statute. I understand why they are doing it. I'd do something a little bit different, but I'm sorry. You adjudicated guilty. You sentenced to fifteen years state prison under the PRR statute, which I find constitutional, day for day; credit for the time you've already served..." (R 16-17) (emphasis supplied)

On appeal to the Fifth District Court of Appeal, Petitioner argued that the trial court erred in sentencing Petitioner as a Prison Releasee Reoffender because the statute is unconstitutional. On June 25, 1999, the Fifth District issued its opinion affirming Petitioner's sentence. See Sturgis v. State, 24 Fla. L. Weekly D 1509 (Fla. 5th DCA June 25, 1999). (Appendix) In rejecting Petitioner's argument, the District Court cited to Speed v. State, 24 Fla. L. Weekly D1017 (Fla. 5th DCA April 23, 1999) which is currently pending review with this Court in case number 95,706.

A timely notice to invoke this Court's discretionary jurisdiction was filed on July 26, 1999.

## **SUMMARY OF THE ARGUMENT**

This Honorable Court has discretionary jurisdiction pursuant to Jollie v. State, 405 So. 2d 418 (Fla. 1981) to review the instant case where the Fifth District Court of Appeal cited in its opinion to a case which is currently pending review with this Court.

## ARGUMENT

THIS COURT HAS JURISDICTION TO REVIEW  
THE INSTANT CASE PURSUANT TO JOLLIE V. STATE,  
405 So. 2d 418 (Fla. 1981).

Petitioner appealed to the Fifth District Court of Appeal, arguing that the trial court erred in sentencing him as a Prison Releasee Reoffender because the statute is unconstitutional. The Fifth District affirmed Petitioner's sentences citing to Speed v. State, 24 Fla. L. Weekly D1017 (Fla. 5th DCA April 23, 1999) which has been accepted by this Court for review in case number 95,706. This Honorable Court has discretionary jurisdiction to accept the instant case pursuant to Jollie v. State, 405 So. 2d 418 (Fla. 1981).



**CONCLUSION**

Petitioner respectfully requests this Honorable Court to exercise its discretionary jurisdiction and accept the instant case for review.

Respectfully submitted,

JAMES B. GIBSON  
PUBLIC DEFENDER  
SEVENTH JUDICIAL CIRCUIT



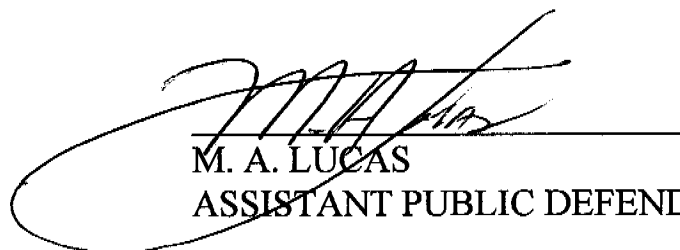
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**CERTIFICATE OF SERVICE**

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 Blvd., Fifth Floor, Daytona Beach, FL 32118 via his basket at the Fifth District Court of Appeal and mailed to: Mr. Robert L. Sturgis, DC# 587770, Santa Rosa Correctional Institution, 5850 E. Milton Road, Milton, Florida 32853, on this 5<sup>th</sup> day of August, 1999.

  
M. A. LUCAS  
ASSISTANT PUBLIC DEFENDER

IN THE SUPREME COURT OF FLORIDA

ROBERT L. STURGIS, )

Petitioner, )

vs. )

STATE OF FLORIDA, )

Respondent. )

5<sup>TH</sup> DCA Case No. 98-1291

Supreme Court Case No.

**APPENDIX**

Sturgis v. State,

24 Fla. L. Weekly D 1509 (Fla. 5<sup>th</sup> DCA June 25, 1999)

JAMES B. GIBSON  
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SEVENTH JUDICIAL CIRCUIT

  
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to file monthly reports, we agree with the appellant's argument that there was not a sufficient evidentiary basis for the trial judge's finding that the other violations were willful. At the revocation hearing, the appellant testified that he did not attend an anger management course, perform his community service, or undergo psychological evaluation because he had never been directed by either of his probation officers as to how or where to do these things, and he did not know how to do them on his own. Testimony from the probation officers did not contradict the appellant's testimony in this regard. The appellant's failure to have completed these conditions at the time of the final hearing was not willful under these circumstances, especially in light of the fact that over four years of his five-year term of probation remained at the time the affidavit of violation was filed.

The judge did not indicate whether he would have revoked the appellant's probation and imposed the same sentence solely because of the appellant's failure to file monthly reports. We accordingly reverse the order of revocation of probation, vacate the sentence imposed upon revocation of probation, and remand this case for reconsideration of the revocation and sentencing decisions. See *Jenkins v. State*, 691 So. 2d 41 (Fla. 1st DCA 1997). (LAWRENCE and BENTON, JJ., CONCUR.)

\* \* \*

POOLE v. STATE. 1st District. #98-3802. June 25, 1999. Appeal from the Circuit Court for Escambia County. DISMISSED. *Robinson v. State*, 373 So. 2d 898 (Fla. 1979).

WILLIAMS v. STATE. 1st District. #s 98-2936 & 98-2946. June 25, 1999. Appeal from the Circuit Court for Duval County. Dismissed. See *Robinson v. State*, 373 So. 2d 898 (Fla. 1979); *Miller v. State*, 697 So. 2d 586 (Fla. 1st DCA 1997); *Stone v. State*, 688 So. 2d 1006, 1008 (Fla. 1st DCA 1997).

\* \* \*

WINN-DIXIE STORES, INC. vs. WRUBLE. 3rd District. #98-3236. June 23, 1999. Appeal from the Circuit Court for Dade County. Affirmed. See *E.R. Squibb & Sons, Inc. v. Farnes*, 697 So. 2d 825 (Fla. 1997) (holding that a trial court does not abuse its discretion when it grants a new trial where the verdict is against the manifest weight of the evidence).

T.L.S. vs. STATE. 3rd District. #98-2998. June 23, 1999. Appeal from the Circuit Court for Dade County. Affirmed. See *Carter v. State*, 469 So. 2d 775 (Fla. 1st DCA 1984). See also *R.A.P. v. State*, 575 So. 2d 277 (Fla. 3d DCA 1991); *D.B. v. State*, 559 So. 2d 305 (Fla. 3d DCA 1990); *Koenig v. State*, 214 So. 2d 627 (Fla. 3d DCA 1968).

GOODMAN vs. STATE. 3rd District. #98-2291. June 23, 1999. Appeal from the Circuit Court for Monroe County. Affirmed. See *Rodriguez v. State*, 622 So. 2d 1084 (Fla. 4th DCA 1993); *E.A. v. State*, 599 So. 2d 251 (Fla. 3d DCA 1992).

LOS UNIDOS ENTERPRISES, INC. vs. PENENORI. 3rd District. #98-1590. June 23, 1999. Appeal from the Circuit Court for Dade County. Affirmed. See *Williams Island Country Club, Inc. v. San Simeon at the Calif. Club, Ltd.*, 454 So. 2d 23 (Fla. 3d DCA 1984). See also *Dupont v. Whiteside*, 721 So. 2d 1259 (Fla. 5th DCA 1998); *Hunter v. Marquardt, Inc.*, 549 So. 2d 1095 (Fla. 1st DCA 1989); *Mooings Ass'n, Inc. v. Tortoise Island Communities, Inc.*, 460 So. 2d 961 (Fla. 5th DCA 1984), *quashed in part*, 489 So. 2d 22 (Fla. 1986).

LADLER vs. STATE. 3rd District. #98-1137. June 23, 1999. Appeal from the Circuit Court for Dade County. Affirmed. See *C.L.B. v. State*, 689 So. 2d 1171 (Fla. 2d DCA 1997) (holding that respondent properly adjudicated delinquent for disorderly conduct where his nonverbal acts disturbed or interfered with an arrest); *K.G. v. State*, 338 So. 2d 72 (Fla. 3d DCA 1976) (holding that arrest for disorderly conduct is not unconstitutional if person arrested obstructed officers' execution of their legal duty, and was not based only on comments uttered).

TERRERO vs. STATE. 3rd District. #97-3459. June 23, 1999. Appeal from the Circuit Court for Dade County. Affirmed. See *Green v. State*, 647 So. 2d 391 (Fla. 1994).

\* \* \*

MAXLEY v. STATE. 5th District. #99-1544. June 25, 1999. 3.850 Appeal from the Circuit Court for Osceola County. AFFIRMED. See *Mitchell v. State*, 696 So. 2d 410 (Fla. 5th DCA 1997), *rev. denied*, 700 So. 2d 686 (Fla. 1997).

HANEY v. STATE. 5th District. #99-1322. June 25, 1999. 3.850 Appeal from the Circuit Court for Orange County. AFFIRMED. See *Hill v. Dugger*, 556 So. 2d 1385 (Fla. 1990).

ANDERSON v. STATE. 5th District. #99-1295. June 25, 1999. 3.800 Appeal from the Circuit Court for Sumter County. AFFIRMED. See *Sanders v. State*, 621 So. 2d 723 (Fla. 5th DCA) (Rule 3.800 challenge to scoresheet based on inaccurate prior record should have been made at sentencing and on appeal; any reduction would be *de minimis* and likely not drop defendant into lower sentencing bracket), *rev. denied*, 629 So. 2d 135 (Fla. 1993).

NEGRON v. STATE. 5th District. #98-2705. June 25, 1999. Appeal from the Circuit Court for Osceola County. AFFIRMED. *State v. Johnson*, 601 So. 2d 219 (Fla. 1992); *Amado v. State*, 595 So. 2d 282 (Fla. 1991).

PATTEN v. STATE. 5th District. #98-2677. June 25, 1999. Appeal from the Circuit Court for Orange County. AFFIRMED. See *McKnight v. State*, 727 So. 2d 314 (Fla. 3d DCA 1999); see also *Speed v. State*, 24 Fla. L. Weekly D1017 (Fla. 5th DCA April 23, 1999); *Woods v. State*, 24 Fla. L. Weekly D831 (Fla. 1st DCA March 26, 1999).

GREEN v. STATE. 5th District. #98-2063. June 25, 1999. Appeal from the Circuit Court for Putnam County. AFFIRMED. See *McKnight v. State*, 727 So. 2d 314 (Fla. 3d DCA 1999); see also *Speed v. State*, 24 Fla. L. Weekly D1017 (Fla. 5th DCA April 23, 1999); *Woods v. State*, 24 Fla. L. Weekly D831 (Fla. 1st DCA March 26, 1999).

OLIVER v. STATE. 5th District. #98-1725. June 25, 1999. Appeal from the Circuit Court for Seminole County. AFFIRMED. See *Kipping v. State*, 702 So. 2d 578, 581 (Fla. 2d DCA 1997).

SANDERS v. STATE. 5th District. #98-1523. June 25, 1999. Appeal from the Circuit Court for Seminole County. AFFIRMED. See *McKnight v. State*, 727 So. 2d 314 (Fla. 3d DCA 1999); see also *Speed v. State*, 24 Fla. L. Weekly D1017 (Fla. 5th DCA April 23, 1999); *Woods v. State*, 24 Fla. L. Weekly D831 (Fla. 1st DCA March 26, 1999).

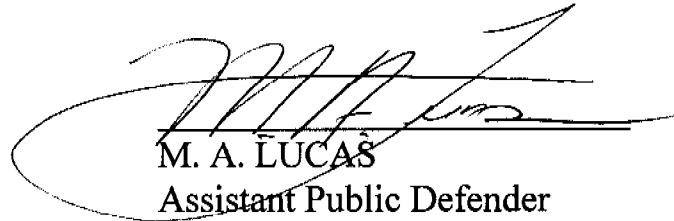
DOBSON v. STATE. 5th District. #98-1449. June 25, 1999. 3.850 Appeal from the Circuit Court for Seminole County. AFFIRMED. *State v. Woodley*, 695 So. 2d 297 (Fla. 1997) (*State v. Gray*, 654 So. 2d 552 (Fla. 1995) does not apply retroactively).

STURGIS v. STATE. 5th District. #98-1291. June 25, 1999. Appeal from the Circuit Court for Volusia County. AFFIRMED. See *McKnight v. State*, 727 So. 2d 314 (Fla. 3d DCA 1999); see also *Speed v. State*, 24 Fla. L. Weekly D1017 (Fla. 5th DCA April 23, 1999); *Woods v. State*, 24 Fla. L. Weekly D831 (Fla. 1st DCA March 26, 1999).

\* \* \*

CERTIFICATE OF FONT

I HEREBY CERTIFY that the size and style of type used in the brief is 14 point proportionally spaced Times New Roman.



M. A. LUCAS  
Assistant Public Defender