

IN THE SUPREME COURT OF FLORIDA

ALETHIA JONES, :  
 :  
           Petitioner, :  
 :  
 vs. :                   Case No. SC00-2127  
 :  
 STATE OF FLORIDA, :  
 :  
           Respondent. :  
 :  
 \_\_\_\_\_ :

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

INITIAL BRIEF OF PETITIONER ON THE MERITS

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TENTH JUDICIAL CIRCUIT

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TOPICAL INDEX TO BRIEF

	<u>PAGE NO.</u>
STATEMENT OF THE CASE AND FACTS	1
SUMMARY OF THE ARGUMENT	4
ARGUMENT	5
ISSUE	
WHETHER THE TRIAL COURT ERRED IN SENTENCING PETITIONER TO DRUG OFFENDER PROBATION PURSUANT TO F.S. 948.01(13), FLORIDA STATUTES (1999), WHEN THE SENTENCING GUIDELINES SCORESHEET RECOMMENDS A SENTENCE OF IMPRISONMENT.	5
CONCLUSION	9
CERTIFICATE OF SERVICE	

TABLE OF CITATIONS

<u>CASES</u>	<u>PAGE NO.</u>
<u>Ringling v. State,</u> 678 So. 2d 1339 (Fla. 2d DCA 1996)	7
<u>State v. Brown,</u> 723 So. 2d 857 (Fla. 4th DCA 1998)	7
<u>State v. Dugan,</u> 685 So. 2d 1210 (Fla. 1996)	7
<u>State v. Jones,</u> case #2D99-4454 (Fla. 2d DCA Sept. 27, 2000)	2
<u>State v. Williams,</u> 759 So. 2d 1 (Fla. 4th DCA 1998)	1, 2, 6
 <u>OTHER AUTHORITIES</u>	
§ 921.0026(3), Fla. Stat. (1999)	5
§ 948.01 (13), Fla. Stat. (1999)	4, 5
§ 948.01(13) or 948.034, Fla. Stat. (1999)	1
§ 948.01(13), Fla. Stat. (1999)	1, 2, 4-8
§ 948.034, Fla. Stat. (1999)	1, 5-7

STATEMENT OF TYPE USED

I certify the size and style of type used in this brief is Courier 12 point, a font that is not proportionally spaced.

STATEMENT OF THE CASE AND FACTS

In the Circuit Court for Pinellas County, the state filed an information charging Petitioner, Alethia Jones, with possession of cocaine. [R8] This offense allegedly occurred on February 21, 1999. [R8] On November 3, 1999, the trial court, the Honorable Lauren C. Laughlin presiding, conducted a sentencing and plea hearing. [R28] At an earlier hearing, Dr. Peter Spoto testified that Petitioner was a chronic substance abuser. [R30,31] Counsel noted a recommendation from PAR that the Petitioner complete the long-term residential program at Operation PAR. [R31] Defense counsel argued that Appellant was eligible for drug probation under either sections 948.01(13) or 948.034, Florida Statutes (1999). The court expressed a concern over whether 948.01(13) permitted a sentence outside the sentencing guidelines. [R32] The sentencing guidelines recommended a term of imprisonment for Petitioner. [R31] Defense counsel cited to State v. Williams, 759 So. 2d 1 (Fla. 4th DCA 1998), for authority that the court could impose a sentence outside the guidelines. [R32,33-34]

The prosecutor argued that the Department of Corrections had not provided for a program that met the description of the one provided for in 948.01(13)(a). [R34-35,38] Defense counsel responded by noting that the Department of Corrections routinely sent people to the PAR programs. [R35]

The court concluded [R41]:

I believe, though, that this section of Statute 948.01(13) is somewhat analogous to 948.034(2) in that the language in the statute

appears to be clear and unambiguous. And in trying to construe it according to its plain meaning, I don't think I have to go behind it to try and determine what the legislative intent is. And it says, quite frankly, that the Court has the authority to place someone on drug offender probation if it appears upon a hearing that the Defendant is a chronic drug offender, chronic substance abuser, and whose criminal conduct is in violation of chapter 893.

Following this ruling, Petitioner entered a no contest plea to the offense with the understanding that she be placed on drug probation for two years. [R9-10,43-45] The trial court adjudicated her guilty. [R11-12] The court placed Petitioner on drug offender probation for two years. [R16-18,39,45] The court entered an order finding that Petitioner was a chronic substance abuser and eligible for drug probation under section 948.01(13), Florida Statutes (1999). [R21-22,41-42] A sentencing guidelines scoresheet was filed. [R13-15] On November 9, 1999, respondent filed a notice of appeal. [R23]

The Second District Court of Appeal reversed the lower court's sentence of drug probation. State v. Jones, case #2D99-4454, (Fla. 2d DCA Sept. 27, 2000). The appellate court stated, "We hold that Jones's sentence of drug offender probation is a departure sentence to which the trial court failed to set forth written reasons for the downward departure." Id. The district court certified conflict with State v. Williams, 759 So. 2d 1 (Fla. 4th DCA 1998). Petitioner filed a notice to invoke the discretionary jurisdiction of this court. On October 24, 2000, this court issued an order

postponing a decision on jurisdiction and ordered an initial brief to be filed.

SUMMARY OF THE ARGUMENT

The decision of the District Court of Appeal invalidates a statutory provision that clearly provides for drug probation. The decision sets forth very little reasoning for this invalidation. Contrary to the opinion, section 948.01 (13), Florida Statutes (1999), unequivocally provides for drug treatment for the chronic substance abuser. The lower court properly found that Petitioner was a chronic substance abuser and sentenced her accordingly under this section. Because section 948.01(13) brings Petitioner's sentence of probation outside the sentencing guidelines, the trial court was not required to file written reasons for a departure from the guidelines sentence of imprisonment.



ARGUMENT

ISSUE

WHETHER THE TRIAL COURT ERRED IN SENTENCING PETITIONER TO DRUG OFFENDER PROBATION PURSUANT TO F.S. 948.01(13), FLORIDA STATUTES (1999), WHEN THE SENTENCING GUIDELINES SCORESHEET RECOMMENDS A SENTENCE OF IMPRISONMENT.

In the trial court, respondent argued that section 948.01(13), Florida Statutes (1999)--the provision under which the lower court sentenced Petitioner to drug probation--should have no effect for two reasons: one, section 921.0026(3), Florida Statutes (1999), which prohibits a guidelines departure for reasons of substance abuse or addiction, implicitly repealed section 948.01(13); and two, a more specific statute section 948.034, Florida Statutes (1999), supersedes the more general provision of section 948.01 (13). These arguments are not persuasive. Both section 948.01 (13) and section 948.034 provide an alternative sentencing scheme for drug abusers. These provisions are completely outside the sentencing guidelines; they provide for specific drug treatments as opposed to the general punishments under the sentencing guidelines. In addition, differences between the two sections require the recognition of both as sentencing options.

The argument that a statutory provision that the legislature has chosen not to repeal is no longer operative because of subsequent changes in sentencing guidelines considerations is not persuasive. Most importantly, section 948.01 (13), by providing

for probation in drug cases without regard to prior record, is a sentencing option that is outside the sentencing guidelines. The court in State v. Williams, 759 So. 2d 1 (Fla. 4th DCA November 18, 1998), reached this conclusion stating,

Section 948.034 gives the trial judge the discretion to order probation and drug treatment in lieu of a sentence under the sentencing guidelines; section 948.01(13) allows the court to withhold the imposition of sentence and place the defendant on drug offender probation. Sentences under sections 948.034 and 948.01(13) are not technically "departures" since they are imposed completely outside of the guidelines.

Id. (emphasis added).

Although the trial court in Williams did not hear an argument concerning the claimed conflict between guidelines provisions and section 948.01(13), this issue was not raised because the prosecutor in Williams conceded that the drug provision was outside of the guidelines. Being outside the sentencing guidelines, section 948.01(13) is not subject to the mandated considerations of guideline sentences.

If the guideline provisions implicitly repeal section 948.01(13), section 948.034, which also provides for drug probation, would arguably be similarly repealed. Section 948.034 permits a probationary term for drug offenders when the guideline sentence may call for incarceration. Do the enactment of modifications to the sentencing guideline laws reject the possibility of drug probation under this section? The prosecutor did not make this far reaching argument in the trial court. Both sections 948.01(13) and 948.034 constitute a legislative scheme for the treatment of drug users as opposed to drug dealers. These sections

provide for more than the determination of punishment under the sentencing guidelines, they provide for drug treatment, residential and otherwise. Courts have recognized this valid treatment option. See, State v. Brown, 723 So. 2d 857 (Fla. 4th DCA 1998) (Court can impose sentence of drug probation even though sentencing guidelines call for a sentence of imprisonment.); Ringling v. State, 678 So. 2d 1339 (Fla. 2d DCA 1996) (Drug probation sentence is valid.). This court should not make wholesale changes to the sentencing of drug offenders by adopting the District Court's position.

Even though sections 948.01(13) and 948.034 are similar in that they both provide for drug probation, the sections address different drug users. Therefore, the argument that 948.01(13) is subsumed within section 948.034 is not convincing. Unlike section 948.034, section 948.01(13) is directed at a "chronic substance abuser." §948.01(13), Fla.Stat. (1999) (emphasis added). Section 948.034, on the other hand, does not require such a finding. In fact, section 948.034(1)(a) specifically targets a person who has no prior drug convictions. As long as this distinction exists, the legislature's provisions for drug probation under these two sections should not be disturbed.

The legislative intent of a statute should be determined from its plain meaning. See, State v. Dugan, 685 So. 2d 1210 (Fla. 1996). Section 948.01(13) clearly provides for drug treatment for the chronic substance abuser. The trial court found that Petitioner was indeed a chronic substance abuser. [R42] Pursuant to section 948.01(13), the court placed Petitioner on drug probation.

[R16-18,45] Under the terms of this probation, Petitioner must comply with structured, residential drug abuse treatment. [R17,31-32,45] The duration of this treatment will range from 12 to 18 months. [R31-32] Under these circumstances, Petitioner's drug probation is consistent with the requirements of 948.01(13). Consequently, this court should affirm the lower court's use of this alternative sentencing.

## CONCLUSION

Based on the above arguments and authorities, Petitioner respectfully requests that this court affirm the lower court's judgment and sentence.

CERTIFICATE OF SERVICE

I certify that a copy has been mailed to Ronald Napolitano, Suite 700, 2002 N. Lois Ave., Tampa, FL 33607, (813) 873-4739, on this \_\_\_\_\_ day of January, 2002.

Respectfully submitted,

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