ORIGINAL

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v.

TIMOTHY MEEKS,

Respondent.

CASE NO. SC,00799

PETITIONER'S INITIAL BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

Petitioner, the State of Florida, the Appellee in the First District Court of Appeal and the prosecuting authority in the trial court, will be referenced in this brief as Petitioner, the prosecution, or the State. Respondent, Timothy Meeks, the Appellant in the First District Court of Appeal and the defendant in the trial court, will be referenced in this brief as Respondent or his proper name.

The symbol "I" will refer to the one volume record on appeal. Each symbol will be followed by the appropriate page number in parentheses.

All emphasis through bold lettering is supplied unless the contrary is indicated.

CERTIFICATE OF FONT AND TYPE SIZE

Counsel certifies that this brief was typed using Courier New 12.

STATEMENT OF THE CASE AND FACTS

In 1992, Meeks originally pled nolo contendere to attempted armed robbery, and the trial court sentenced him to four years of prison as a youthful offender followed by two years of probation. (1.6). In 1996, Meeks pled guilty to violating his probation pursuant to a plea agreement with the State. At the plea hearing, the prosecutor stated:

> I understand that this is a downward departure from the sentencing guidelines. The agreement Mr. Osho and I have

reached, the prior record on this defendant is a juvenile record.

Back with this case was originally pled, Mr. Meeks received a four year D.O.C. followed by two years probation as a youthful offender. He was in the Department of Corrections until July the 19th of 1995, and basically until he got picked up on the trespass after warning was a model probationer according to Mr. Kendrick. I spoke to Mr. Kendrick, the probation officer, and that's why we have agreed to the two year community control.

Once Mr. Meeks is found to have a substantive violation of his youthful offender, he will then be in adult court, no longer under the youthful offender statute. And if he violates again, then he will be looking at 12 to 27 years in the Department of Corrections. That's the reason that I had offered the two years community control, based on Mr. Kendrick's recommendation.

(1.43). After retrieving case law for the court, the prosecutor continued:

MS. FREEMAN: Here's the case, Judge, that I had told you would allow on a substantive violation to exceed the six years of the youthful offender. Basically sentence him up to anything you could have as an adult.

THE COURT: This appears to be an amendment to Statute 1990. Is that what that is?

MS. FREEMAN: Yes, sir. And Mr. Meeks' offenses occurred in 1992, so he would fall under the new statute.

* * *

THE COURT: What was the agreement ya'll reached?

MR. OSHO: Two years community control, Your Honor.

MS. FREEMAN: And the Court would need to find that there was a substantive violation, because there was a new arrest.

(1.45). During the plea colloquy the trial court asked Meeks if he understood that the maximum penalty which could be imposed was thirty years in the state penitentiary. (1.47). The trial court

specifically found that Meeks had violated his probation by committing a new substantive offense. (1.48). The trial court adjudicated Meeks guilty and placed Meeks on community control for a period of two years. (1.49). Neither the trial court's oral statement or the judgment and sentence indicated that the trial court was re-imposing youthful offender sanctions. (1.49, 26-31).

Meeks failed to remain confined to his residence on four occasions. (I.34,61). The trial court revoked his probation and sentenced Meeks to ten years of prison. (1.57). Meeks argued that the trial court could not sentence him above the six-year statutory limit for youthful offender sentences. (1.51-53).

Meeks appealed his sentence to the First District Court of Appeal. The found that Meeks violation of his community control was a technical violation, and that he could only be sentenced for a period of six years with credit for time served. Meeks V. State, 25 Fla. L. Weekly D684 (Fla. 1st DCA March 13, 2000). The First District certified the following question:

> CAN A CIRCUIT COURT RE-SENTENCE A YOUTHFUL OFFENDER FOR A SUBSTANTIVE VIOLATION UNDER SECTION 958.14, FLORIDA STATUTES, WHEN THE ACTS UPON WHICH THE VIOLATION IS BASED DO NOT CONSTITUTE A SEPARATE CRIMINAL OFFENSE?

Id.

SUMMARY OF ARGUMENT

Meeks appealed his sentence claiming that it violated the statutory limit for youthful offender sentences because it exceeded the six-year limitation. The First District Court of Appeal reversed Meeks' ten-year prison sentence, and certified a question of whether the circuit court could re-sentence a youthful offender for a substantive violation under Section 958-14, Florida Statutes, when the acts upon which the violation is based do not constitute a separate criminal offense.

The State asserts that the trial court could sentence Meeks to ten years in prison following his second violation of community sanctions. Section 948.14, Florida Statutes (1991), allows the trial court to sentence a youthful offender who commits a substantive violation of his or her probation or community control, in excess of the six-year limitation of youthful offender sentence. Meeks was originally sentenced as a youthful offender to four years of prison followed by two years of probation. When Meeks violated his probation, the trial court sentenced Meeks, pursuant to a plea bargain, to two years of community control. However, as part of the plea agreement, the trial court sentenced Meeks as adult as evident by the special finding that Meeks had violated his probation by committing a substantive offense. Therefore, when the trial court sentenced Meeks for his violation of community control, the provisions of the youthful offender statute no longer applied, and Meeks's ten-year prison sentence was within the statutory maximum

for attempted robbery with a firearm. Hence, Meeks's sentence is proper.

Moreover, because remaining confined to one's residence is an critical component to community control, Meeks's failure to remain at his residence was a substantive, not a technical, violation of community control. Accordingly, the trial court in the case at bar properly sentenced Meeks to ten years of prison because Meeks committed a substantive violation of his community control.

ARGUMENT

ISSUE I

CAN A CIRCUIT COURT RE-SENTENCE A YOUTHFUL OFFENDER FOR A SUBSTANTIVE VIOLATION UNDER SECTION 958.14, FLORIDA STATUTES, WHEN THE ACTS UPON WHICH THE VIOLATION IS BASED DO NOT CONSTITUTE A SEPARATE CRIMINAL OFFENSE?

In 1992, Meeks originally pled nolo contendere to attempted armed robbery, and the trial court sentenced him to four years of prison as a youthful offender followed by two years of probation. (1.6). In 1996, Meeks pled guilty to violating his probation, and the trial court placed Meeks on community control for a period of two years. (1.49). However, pursuant to a plea agreement the trial court made a specific finding that Meeks had violated his probation by committing a substantive offense and the trial court informed him that he was subject to a thirty-year sentence. (1.47). Meeks failed to remain confined to his residence on four occasions. (I.34,61). The trial court revoked his community control, and sentenced Meeks to ten years of prison. (1.57). Meeks appealed his sentence to the First District Court of Appeal, and the First District certified a question in which it ask this Court if a circuit court can re-sentence a youthful offender to a non youthful offender sentence based on acts which do not constitute a separate criminal offense. The State asserts that the court could sentence Meeks to the ten-year prison sentence.

First, the State respectfully asserts that Meeks was not a youthful offender when the trial court sentenced him to prison.

The youthful offender statute places six year statutory maximum on a youthful offender. Section 958.14, Florida Statutes (1997), provides that:

> A violation or alleged violation of probation or the terms of a community control program shall subject the youthful offender to the provisions of s. 948.06(1). However, no youthful offender shall be committed to the custody of the department for a substantive violation for a period longer than the maximum sentence for the offense for which he or she was found guilty, with credit for time served while incarcerated, or for a technical or nonsubstantive violation for a period longer than 6 years or for a period longer than the maximum sentence for the offense for which he or she was found guilty, whichever is less, with credit for time served while incarcerated.

Thus, "[a] youthful offender can be sentenced in excess of six years after revocation of probation if the violation was substantive." Dunbar v. State, 664 So.2d 1093, 1094 (Fla. 2d DCA 1995). Robinson v. State, 702 So.2d 1346, 1347 (Fla. 5th DCA 1997)("This section permits a youthful offender to be sentenced to a term longer than 6 years, after revocation of probation if the violation is substantive."); pill v. State, 692 So.2d 277, 278 (Fla. 5th DCA 1997)("However, section 958.14, Florida Statutes (1991), permits sentences in excess of the six-year cap for youthful offenders who commit substantive violations of probation."); Johnson v. State, 678 So.2d 934, 934-935 (Fla. 3d DCA 1996)("Under amended section 958.14, a youthful offender can be sentenced in excess of six years after revocation of probation if the violation was substantive rather than technical.").

Section 958.14 also provides that when a defendant violates his probation, he is subject to the provisions of Section 948.06(1), Florida Statutes. Section 948.06(1), provides in pertinent part:

> Whenever within the period of probation or community control there are reasonable grounds to believe that a probationer or offender in community control has violated his or her probation or community control in a material respect, any law enforcement officer who is aware of the probationary or community control status of the probationer or offender in community control . . . may arrest . . . such probationer or offender without warrant wherever found and forthwith return him or her to the court granting such probation or community control.... The court, upon the probationer or offender being brought before it, shall advise him OK her of such charge of violation and, if such charge is admitted to be true, may forthwith revoke, modify, or continue the probation or community control, or place the probationer into a community control program. If probation or community control is revoked, the court shall adjudge the probationer or offender guilty of the offense charged and proven or admitted, unless he or she has previously been adjudged guilty, and impose any sentence which it might have originally imposed before placing the probationer on probation or the offender into community control.

Thus, upon revocation of probation or community control, the trial court must re-sentence the defendant. Conditions of probation must be reimposed for the new sentence. Therefore, if the trial court did not reimpose the youthful offender sentence, the youthful offender sentence did not follow to his second sentence. As Judge Minor, stated in his dissent:

> [T]he reference in section 958.14 back to section 948.06(1) was intended to and does authorize the trial court, upon a finding of a violation of probation or community control, to deal with one who was initially afforded youthful offender treatment as it would any other probationer or community controllee. Otherwise, the reference back to section 948.06(1) seems to me bereft of meaning. To be sure, section 948.06(1) speaks to procedural matters such as arrest and hearing but it is also substantive in that it authorizes the trial court to revoke probation or community control upon a finding of a "material" violation by the probationer or community controllee and to sentence the offender to "any sentence which it might have originally imposed." Additionally section 948.06(1) requires the court to adjudge the "probationer or offender guilty of the offense charged" unless such has previously been done.

Moreover, Meeks implicitly agreed to an adult sentence as part of the plea agreement in 1996. After Meeks' first violation of probation, Meeks pled pursuant to a plea bargain in which he received two years of community control. (1.43). The prosecutor noted that Meeks would no longer be a youthful offender because he had committed a substantive offense which was a reason for the state agreed to the sentence of community control. (1.43). The prosecutor stated that after he was found to commit a substantive violation he would be in adult court and subject to 17 to 77 years if he violated again. (I. 43). When the trial court asked about the agreement, the prosecutor stated that the Court would need to find that there was a substantive violation because of the new arrest. (1.45). **Neither** the trial court's oral statement or the judgment and sentence indicated that the trial court was re-imposing youthful offender sanctions. (1.49, 26-31). Moreover, the trial court asked if Meeks was aware that the maximum penalty which could be imposed was thirty years. (1.47). Accordingly, the trial court sentenced Meeks as an adult, not as a youthful offender, after the first violation of probation. Therefore, because he was an adult, his sentence of ten years for his second violation was proper, and this Court should affirm Meeks' sentence.

Nevertheless, if this Court finds that Meeks was a youthful offender when he was placed on community control, Meeks failure to remain at his residence on four separate occasions should be considered as a substantive violation of his community control. Section 948.01, Florida Statutes (1991), defines community control

as "a form of intensive supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads. Community control is an individualized program in which the freedom of an offender is restricted within the community, home, or noninstitutional residential placement and specific sanctions are imposed and enforced." One of Meeks' conditions of community control was that he "remain confined to your approved residence except for one half-hour before and after your approved employment, public service work or any other special activities approved by your Community Control Officer." (1.31). Remaining at one's approved residence is a vital condition of community control. In fact, confinement to one's residence is the critical difference between probation and community control. See Davis v. State, 704 So.2d 681, 683 (Fla. 1st DCA 1997)(stating that "a defendant's failure to obtain necessary permission before leaving an approved residence is a proper reason for revoking community control.")

In Allen v. State, 666 So.2d 259 (Fla. 4th DCA 1996), the Fourth District found that the failure to remain confined to the approved residence was not a technical violation of community control. Allen was placed on community control, and one of the conditions was that "he remain confined to his residence except for one-half hour before and after his employment, public service work or any other special activities approved by his officer." Id. Allen's probation officer testified that on two occasions Allen was not at his residence. Id. The court rejected Allen's argument that the

violations were merely technical. Id. at 260. See also Jacobs v. State, 668 So.2d 294 (Fla. 1st DCA 1996)(when Jacobs violated his probation for consuming alcohol and driving with a suspended license, the court noted that "alcohol use was implicated in the offense for which Mr. Jacobs was placed on probation. The trial court had good reason to find Meeks's violations willful, substantial, and not merely technical.").

Because remaining confined to one's residence is a critical component to community control, Meeks' failure to remain at his residence was a substantive, not a technical violation. Accordingly, the trial court could sentence Meeks in excess of six years, and this Court should answer the certified question in the affirmative.

CONCLUSION

Based on the foregoing, the State respectfully submits the certified question should be answered in the affirmative, the decision of the District Court of Appeal reported at 754 So. 2d 101 should be disapproved, and Meeks' sentence should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing PETITIONER'S **INITIAL BRIEF ON THE MERITS** has been furnished by U.S. Mail to David P. Gauldin, Esq., Assistant Public Defender, Leon County Courthouse, Suite 401, 301 South Monroe Street, Tallahassee, Florida 32301, this 31st day of May, 2000.

Trisha E. Meggs
Attorney for the State of Florida

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