IN THE SUPREME COURT OF FLORIDA

THOMAS B. GIBSON,

Appellant/Petitioner,

v. **Case No. SC02-2362**
L.T. No. 1D02-0118

FLORIDA DEPARTMENT OF CORRECTIONS,

Appellee/Respondent.
_____/

ANSWER BRIEF OF APPELLEE/RESPONDENT

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STATEMENT OF THE CASE AND FACTS

The Department of Corrections (Appellee/Respondent) generally accepts the statement of the case and facts made by Appellant/Petitioner Gibson with the following clarifications or additions:

1) Gibson states in footnote 3, p. 3 of the statement that he was **charged** with twenty-six counts of forgery and twenty-six counts of uttering a forged instrument. Gibson was actually charged with a total of 78 counts, but entered a plea of guilty to the 52 felony counts noted above.

2) On August 2, 2000, the sentencing court entered an order in Case No. 93-360CF granting defendant Gibson's Motion for Correction of Sentence, granting not only credit for actual prison time served in Case Nos. 93-216 and 92-297, but also any unforfeited gain-time:

> The defendant argues that he is entitled to prison credit under *Tripp v. State*, 622 So.2d 941 (Fla. 1993). He is correct. The defendant is a split sentence violator and is therefore entitled to actual prison time spent incarcerated on this case, as well as any unforfeited gain time. In addition, the defendant was originally sentenced on this case on the same day as cases 93-216 and 93-297. On January 27, 1994, 93-360 was run consecutive to 93-216 and 93-297, (sic) Accordingly, the defendant is also entitled to any actual prison time spent on 93-216 and 92-297, plus any unforfeited gain time. (See attached).

See Appellee/Respondent's Appendix A attached.

SUMMARY OF THE ARGUMENT

Under the sentencing guidelines, when sentencing takes place together, convictions for separate crimes result in individual that are bundled into one overall unit the interrelatedness of the sentences under the guidelines. Therefore, a guidelines sentence consisting of a combined period of incarceration followed by a period of probation which results from multiple crimes scored on a single scoresheet is the equivalent of a probationary split sentence within the meaning of Poore v. State, 531 So.2d 161 (Fla. 1988). Accordingly, when credit consisting of time served and unforfeited gain-time is applied under Tripp v. State, 622 So.2d 941 (Fla. 1993) upon sentencing for revocation of probation and the gain-time is subject to forfeiture under section 944.28(1), Florida Statutes, the forfeiture may be imposed without regard to the actual length of the new sentence imposed under the principles enunciated in Eldridge v. Moore, 760 So.2d 888 (Fla. 2000). The overall sentence (and any penalties associated with it due to forfeiture of gain-time) does not result in a general sentence prohibited by law since each individual offense received a specific sentence when scored in relationship to other offenses

under the guidelines. There is no legal basis for authorizing only credit for time served but no gain-time as suggested by Mr. Gibson. For these reasons, the certified question should be answered in the affirmative and the decision of the district court affirmed.

ARGUMENT

The Gain-Time Forfeiture Penalty Enunciated in Eldridge v. Moore, 760 So.2d 888 (Fla. 2000), Applies Where A Defendant Receives A Sentence of Incarceration for One Offense Followed by A Sentence of Probation for Another Offense Under the Sentencing Guidelines, Where Both Crimes Were Scored On A Single Scoresheet and the Trial Court Awards Prison Credit Pursuant To Tripp v. State, 622 So.2d 941 (Fla. 1993), Upon Violation of Probation for the Second Offense. The Certified Question Should Be Answered in the Affirmative.

A. Standard of Review

The standard of review for this Court is the same as the standard of review for the district court when the district court's review was by certiorari from the circuit court functioning in its appellate capacity. When a district court of appeal reviews the final order of a circuit court acting in its review capacity, review is limited to determining whether the lower court violated a clearly established principle of law resulting in a miscarriage of justice. Haines City Community Development v. Heggs, 658 So.2d 523 (Fla. 1995); Sheley v. Florida Parole Commission, 703 So.2d 1202, 1206 (Fla. 1st DCA 1997), decision approved, 720 So.2d 216 (Fla. 1998).

B. Argument

Gibson urges that this Court answer the certified question in the negative and reverse the decision of the First District. Gibson's argument is three-fold. First, Gibson

argues that Eldridge does not apply to his case because Eldridge is limited to cases involving a true split sentence or a probationary split sentence. (I.B. at 9-17.) Second, Gibson contends that while "he is entitled to *credit for time served* in case number 93-360[,] [h]e is not entitled to, nor is he now seeking, any *unforfeited gain time* in case number 93-360." (I.B. at 18-20.) Finally, Gibson adopts the reasoning from the dissent in the opinion below and asserts that by applying a forfeiture penalty DOC has somehow "amalgamated" his separate sentences into one general sentence in violation of section 775.021(4) and Florida Rule of Criminal Procedure 3.701(d)(12). (I.B. at 20-22.)

1. The Applicability of Eldridge

Gibson's argument on why Eldridge should not apply is woefully simplistic. He simply states that Eldridge is limited to *either a probationary split sentence or a true split sentence* and that he is sentenced to neither. While it is true that the Eldridge case involved an offender who was sentenced to a true split sentence, this Court clearly stated in the opinion that "upon resentencing in either a probationary split sentence or a true split sentence, regardless of whether the trial court resentenced the inmate to a lesser sentence, the Department's

statutory authority to forfeit 'all gain time' upon probation revocation should not be lessened." Eldridge, 760 So.2d at 892. (Emphasis supplied.) Thus the question to be answered is whether the particular combination of incarcerative sentences and probation received by Gibson constitutes a "probationary split sentence" within the meaning of Eldridge.

Both this Court and all the district courts of appeal have either directly or indirectly concluded that a sentencing under the sentencing guidelines using a single guidelines scoresheet that includes both incarceration and community control or probation on a variety of counts or cases is a form of probationary split sentence. See Horner v. State, 617 So.2d 311 (Fla. 1993); Larimore v. State, 823 So.2d 287 (Fla. 1st DCA 2002); Smith v. State, 685 So.2d 1362 (Fla. 2d DCA 1996); Davis v. State, 701 So.2d 119 (Fla. 3d DCA 1997); Johnson v. State, 665 So.2d 380 (Fla. 4th DCA 1996); Cosgrave v. State, 656 So.2d 281 (Fla. 5th DCA 1995).[1]

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[1] In Horner, supra, this Court resolved conflict between the Second District's decision in Horner and the First District's decisions in Lanier v. State, 504 So.2d 501 (Fla. 1st DCA 1987) and Washington v. State, 564 So.2d 563 (Fla. 1st DCA 1990). The issue was whether section 948.01(8), Florida Statutes (1989), which precluded a time gap in a **probationary split sentence**, as defined in Franklin v. State, 545 So.2d 851, 852 (Fla. 1989) and Poore v. State, 531 So.2d 161 (Fla. 1988), prohibited a separation between incarceration and probation as to each case of a multiple-case sentence, or merely barred a

Nevertheless, in spite of this Court's analysis in Horner and the First District's holding in Larimore, Gibson insists (as does the dissenting judge below) that his 1994 sentences, although governed by Tripp, cannot be labeled a form of probationary split sentence. Gibson further asserts that "[a] probationary split sentence is offense-specific." (I.B. at 10.) In support of his position, Gibson cites Maynard v. State, 763 So.2d 480, 481-82 (Fla. 4th DCA 2000). Gibson mixes apples with oranges. In Maynard, the Fourth District considered a

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period of freedom between portions of an individual's overall sentence. All three cases considered by the Court in Horner involved Tripp case scenarios–that is, periods of incarceration in some cases or counts followed by periods of probation in other cases or counts. Clearly, as early as 1993, this Court had concluded that sentences imposed under the sentencing guidelines using one scoresheet that included both terms of incarceration and terms of probation for different cases and counts constituted a form of probationary split sentence under section 948.01.

Most recently, in Larimore, supra, the First District directly held that under Tripp v. State, 622 So.2d 941, 942, (Fla. 1993), "separate crimes and sentences may constitute a split sentence where both crimes were scored on a single scoresheet, and considered in forming a scoresheet sentence."

While the other district courts have not directly held Tripp sentences to be probationary split sentences, each of these courts have relied on Tripp, supra, in disposing of split sentence cases involving multiple cases and counts scored on a single scoresheet. (Unfortunately, the fact patterns in the Smith, Davis, Johnson, and Cosgrave cases, supra, are not really clear; however, if these cases had only involved the traditional probationary split sentence involving only one case, it would seem more likely that these courts would have cited State v. Green, 547 So.2d 925 (Fla. 1989) as the authority for granting credit for time served and unforfeited gain-time rather than Tripp.

defendant's claim "that his sentence of thirty months imprisonment, followed by thirty-six months probation for separate offenses, [was] illegal because it exceed[ed] the maximum 60 month sentence for a third degree felony authorized by law." The district court rejected the defendant's claim, reasoning that defendant's case was "[u]nlike those cases where a defendant's **combined** sentence of imprisonment and probation for a **singular** offense exceeds the maximum sentence authorized by law, [because] the trial court [had] imposed separate sentences", some of which were terms of incarceration and some of which were probation. Maynard, 763 So.2d at 481. (Emphasis supplied.) The Fourth District did not rule that no form of probationary split sentence had been imposed by the circuit court. Rather, the court concluded:

> The trial court did not impose a probationary split sentence (footnote omitted) **for any one offense**. Rather, it imposed a sentence for each offense notwithstanding that the offenses are combined in one scoresheet. *See Weiner v. State*, 562 So.2d 392, 393 (Fla. 5th DCA 1990)("the court is under a duty to impose a sentence for each offense notwithstanding that the offenses are combined in one scoresheet."). The period of probation is limited only by the statutory maximum for the crime.

Maynard, 763 So.2d at 482. (Emphasis supplied.) The Fourth District was merely pointing out that the statutory maximum

applied to each separate sentence and that the only way that the statutory maximum could be violated in Maynard's case would be if the sentencing court had imposed a probationary split sentence of thirty-six months imprisonment followed by thirty-six months probation for **each** offense. However, to the extent that Maynard can be read as suggested by Gibson, it should be overruled.

None of the additional cases cited by Gibson for this proposition are applicable. In Nase v. State, 746 So.2d 469 (Fla. 2d DCA 1997), the Second District reviewed a Villery[2] sentence, another form of probationary split, in which the sentencing court had imposed 4 years' probation preceded by, as a special condition, 16 months' incarceration for an offense limited to a statutory maximum of five years. In Kline v. State, 642 So.2d 1146 (Fla. 1st DCA 1994), the First District reviewed a case where the trial court had imposed concurrent terms of 10 years' incarceration followed by 10 years' probation on **each** of four offenses, all of which were limited to a maximum term of imprisonment of 15 years in prison. In State v. Holmes,

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[2] A Villery sentence is a sentence for a single offense, consisting of a period of probation preceded by a period of confinement imposed as a special condition. See Villery v. Florida Parole & Probation Comm'n, 396 So.2d 1107 (Fla. 1981); see also Poore v. State, 531 So.2d 161, 164 (Fla. 1988).

360 So.2d 380 (Fla. 1978), this Court resolved confusion created by its earlier decision in State v. Jones, 327 So.2d 18 (Fla. 1976), by holding that the combined period of incarceration and probation for **a singular offense charged** may not exceed the statutory maximum period provided by statute.[3] None of these cases even remotely addressed, let alone ruled upon, the particular set of facts presented here–that is, a combination of sentences of incarceration for some offenses followed by periods of probation for other offenses. Accordingly, none of these cases can be relied upon to support Gibson's claim that he did not receive a probationary split sentence within the meaning of Eldridge.

Contrary to Gibson's contentions, it makes sense that sentences imposed under the guidelines which combine incarceration with probation imposed on different counts or cases should be considered a form of probationary split sentence. As this Court has recognized on many occasions:

> [A] single guidelines scoresheet "must be utilized for all offenses pending before [a] court for sentencing," and . . . where a single scoresheet is used for multiple offenses, those offenses must continue to

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[3] The Holmes case involved a true split sentence imposed for a singular offense while the Jones case involved a probationary split sentence of incarceration followed by probation for a singular offense.

> "be treated in relation to each other, even after a portion of the sentence has been violated." Accordingly, where a defendant is sentenced to prison to be followed by probation for multiple offenses, and ultimately violates that probation, the defendant's cumulative sentence may not exceed the guidelines range of the original scoresheet.

Hodgdon v. State, 789 So.2d 958, 962 (Fla. 2002), citing Cook v. State, 645 So.2d 436, 437-38. (Emphasis supplied.) In fact, this Court has long held that, under the sentencing guidelines, when sentencing takes place together, convictions for separate crimes result in individual sentences that are bundled into one interrelated unit. See Horner, 617 So.2d at 313, referencing Tripp v. State, 1993 WL 83094, 18 Fla.L.Weekly S166 (Fla. Mar. 25, 1993)(rejecting contention that conviction of two separate crimes results in two separate sentences when sentencing takes place together). However, this bundling of individual sentences into one overall sentence under the guidelines does not support Gibson's contention that "his sentence [is] illegal because it exceeded the five-year statutory maximum for a third-degree felony." (I.B. at 11.) Again, Gibson mixes apples with oranges. Gibson cannot apply law that governs probationary split sentences imposed as to a single offense to a probationary split sentence that results from sentences imposed for multiple offenses under the guidelines. These are separate and distinct

forms of probationary split sentences to which different parameters apply.

At the time Gibson offended in 1993, sentences imposed by trial court judges were in all cases to be "within any relevant minimum and maximum sentence limitations provided by statute and [to] conform to all other statutory provisions". See § 921.001(5), Fla. Stat. (1992-1993). (Emphasis supplied.) This meant that sentences imposed for the individual offenses could not exceed the statutory maximum authorized under section 775.082, Florida Statutes. Additionally, while each offense received its own sentence, the total amount of incarceration for all the sentences could not exceed the permitted range of the sentencing guidelines, as was determined by the single scoresheet, unless valid departure reasons were provided. Gibson was convicted of Uttering Forged Bills in Case No. 93-216; Uttering a Forged Instrument in Case No. 93-297; and multiple counts of Forgery and Uttering a Forged Instrument in Case No. 93-360.[4] In case numbers 93-216 and 93-297, Gibson was sentenced to consecutive five-year terms of imprisonment. In case number 93-360, Gibson received a five-year probation, to run consecutive to the sentences of incarceration in case

[4] Gibson was also convicted of petit theft in Case Nos. 93-297 and 93-360, but these offenses were misdemeanors not relevant here.

numbers 93-216 and 93-297. All of the offenses for which Gibson was convicted are third degree felonies. The statutory maximum for a third degree felony is five (5) years. Thus, all of the sentences imposed for the individual offenses met the statutory maximum requirements. To preserve uniformity in sentencing, the primary goal of the guidelines, the Legislature further mandated that the overall sentence created when individual sentences were scored under one scoresheet not exceed the permitted range established under the sentencing guidelines. In Gibson's case, he received an overall term of incarceration of ten years followed by five years of probation.[5] The sentencing guidelines scoresheet (attached as Appendix B) shows that Gibson scored out at 180 points, resulting in a recommended range of 9-12 years and a permitted range of 7-17 years. Thus, the overall sentence fell within the guidelines range.

Upon sentencing for violation of probation in Case No. 93-360, Gibson received a 3-year term for the forgery counts followed by a 4-year term for the uttering counts. Again, the

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[5] This **overall sentence** under the guidelines of ten years followed by five years of probation is a form of probationary split that falls squarely within the definition established by this Court in Poore v. State, 531 So.2d 161 (Fla. 1988)(a "probationary split sentence" consists of a period of confinement, none of which is suspended, followed by a period of probation).

individual sentences imposed for the third degree felonies met the requirements for the statutory maximum authorized for the offenses under section 775.082. The sentences also conformed to the guidelines by not exceeding the permitted range with a one-cell bump.[6] The sentencing court initially did not give credit for time served and unforfeited gain-time from the prior 10-year incarceration, possibly because the court believed that it did not have to afford the credit since the combined sentences totaling 17 years did not exceed the maximum of the guidelines permitted range.[7] In any event, subsequently, upon Gibson's

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[6] The permitted range with a one cell bump would have been 9-22 years; the recommended range with a one cell bump would have been 12-17 years.

[7] This Court had recently resolved that issue in its decisions in Hodgdon v.State,789 So.2d 958 (Fla. 2001) and State v. Witherspoon, 810 So.2d 871 (Fla. 2002):

> In *Hodgdon*, this Court specifically stated that an application of *Tripp* was not precluded where the newly imposed sentences were within the guidelines. *Id.* at 962. We reasoned that "both offenses were factors that were weighed in the original sentencing through the use of a single scoresheet and must continue to be treated in relation to each other, even after a portion of the sentence has been violated." *Hodgdon v. State*, 789 So.2d at 963 (quoting *Tripp v. State*, 622 So.2d 941, 942 (Fla. 1993)). Consistent with *Hodgdon* we hold that *Tripp* should be applied notwithstanding the fact that the newly imposed sentence is within

motion, the trial court awarded credit for all time served and unforfeited gain-time pursuant to Tripp. In short, Gibson received five years' credit against his three-year term for the forgery counts and another five years' credit against his four-year term for the uttering counts for an overall ten years' credit against the overall seven-year sentence.

2. Credit for the Unforfeited Gain-Time and the Forfeiture Penalty.

In order to avoid the effect of the forfeiture penalty under section 944.28(1), Gibson now contends that "[h]e is not entitled to, nor is he now seeking, any *unforfeited gain time* in case number 93-360."[8] (I.B. at 18.) Apparently Gibson did not

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the guidelines.

Witherspoon, 810 So.2d at 873.

While not at issue in this case, whether Tripp credit must be applied under the Criminal Punishment Code (CPC) is still unanswered. The CPC replaced the sentencing guidelines upon their repeal effective October 1, 1998. The goal of reducing sentencing disparity which justifies Tripp credit under the sentencing guidelines appears to be abandoned under the CPC. While the CPC does not expressly recognize a Tripp split sentence, the courts have done so in the context of authorizing the imposition of a prison term for one offense followed by probation for another offense when sentenced at the same time. Leduc v. State, 803 So.2d 898 (Fla. 5th DCA 2002). Credit for time served, however, apparently has not been addressed.

[8] In note 9 of the initial brief which footnotes this

realize what he bargained for when he filed his motion to correct sentence. Clearly Gibson received what he requested–that is, time served and unforfeited gain-time from his prior incarceration as required under Tripp.[9] Gibson cannot

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statement, Gibson contends that "[t]here appears to be some confusion in the courts of this state regarding gain time awards." (I.B. at 18.) While the department concedes there is often confusion regarding the award and forfeiture of gain-time, in this instance, the confusion appears to be his. Gibson presents a somewhat tortured explanation the gain-time awards and forfeiture penalties under review in the decisions in Singletary v. Whittaker, 739 So.2d 1183 (Fla. 5th DCA 1999) and Eldridge v. Moore, 760 So.2d 888 (Fla. 2000). Gibson attempts to make distinctions between what he refers to as actual or true awards of gain-time that reduce the sentence and a retention of gain-time that may or may not be forfeited. It appears that Gibson is trying to make a distinction between pre and post-October 1, 1989 gain-time awards upon revocation of probation. In much simpler terms, prior to October 1, 1989, gain-time earned on a prior incarceration must be awarded by the sentencing court upon revocation of probation or community control and that gain-time is not subject to forfeiture due to the revocation. See State v. Green, 547 So.2d 925, 927 (Fla. 1989). After October 1, 1989, the sentencing court is not required to award previously earned gain-time upon sentencing for revocation of probation as it shares the department's authority to declare a forfeiture of gain-time upon revocation of probation or community control. *Compare* § 948.06(6), Fla. Stat. *with* § 944.28(1), Fla. Stat.; see also, Forbes v. Singletary, 684 So.2d 173, 174-175 (Fla. 1996). If the sentencing court does not award gain-time, the gain-time is deemed forfeited by the court and the defendant must serve the forfeiture penalty. If the sentencing court does award the gain-time, then the department may still (and mandatorily does by rule) forfeit the gain-time and requires the defendant to serve out the forfeiture penalty. The end result is that after October 1, 1989, the defendant will serve a forfeiture penalty upon revocation of probation or community control.

[9] Because under Tripp all sentences on a single

simply decide to keep what is beneficial to him and give back what is not. In essence, Gibson is asking that this Court overrule Tripp and its progeny as it relates to credit for gain-time but not as it relates to time served on prior sentences. Gibson seems to argue that while time served on his previous cases should be drawn through and applied to his new sentences in his probation revocation case, gain-time earned while serving that time may not be drawn through and applied. Certainly pre-October 1, 1989 offenders would heartily disagree. Gibson

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scoresheet are treated as an interrelated unit or bundle, credit for time served and gain-time must be drawn through and applied to new sentences imposed upon revocation of probation to protect the integrity of the cumulative sentence under the guidelines. Thus, when a probation is revoked on a case or count which followed the original incarceration, any gain-time "drawn through" to that case or count from the prior incarceration sentence is subject to forfeiture. In short, as a consequence of the violation of probation, under Tripp and the legislative mandate of section 944.28(1), the offender must finish the time not served from the prior incarceration; however, it should be noted that the credit including any gain-time awarded and any associated penalties are incorporated into the new sentence and viewed as a part of the interrelated unit under the guidelines. In essence, Tripp and the application of section 944.28(1) are determinants of the **actual** time to be served upon revocation of probation even though the sentencing court may have stated a lesser term upon sentencing. Thus, although the sentence imposed upon revocation of probation for the subsequent case or count may be shorter than the original sentence imposed on a related case or count, the offender's "cumulative" time to be served after imposition of the forfeiture penalty will not exceed the permitted guidelines range of the original scoresheet because it will necessarily be limited to length of the original sentence imposed. So long as there is no violation of the guidelines, there can be no illegal effect to the forfeiture penalty.

provides no legitimate rationale for this.

This Court acknowledged as early as Tripp that gain-time was a part of "credit for time served" upon revocation or probation or community control and that gain-time for post-October 1, 1989 offenders would be subject to forfeiture. Tripp, 622 So.2d at 943, n.2.(by virtue of chapter 89-531, the revocation of probation or community control now serves to forfeit any gain time previously earned; however, this change in the law is inapplicable to Tripp because his crimes were committed before October 1, 1989, the effective date of the act). The only issue that remains is whether a forfeiture penalty that extends beyond the length of the new sentence imposed is prohibited. This was the issue addressed by this Court in Eldridge. There the Court acknowledged that it was the Legislature's prerogative to condition the retention of any previously earned gain-time upon satisfactory completion of any supervision related to the sentence.

> Furthermore, it was the Legislature that provided for the award of gain time in the first place and it made the retention of that gain time conditional upon the satisfactory completion of the inmate's supervision. See § 944.28(1), Fla. Stat. (1989-1999). Therefore, when an inmate fails to satisfactorily complete his or her supervision and it is revoked, the Department, as part of the executive branch, merely executes or fulfills the legislative mandate that the previously awarded gain

> time be forfeited; thus the inmate must serve out his or her prior incarceration as a penalty for the revocation of supervision. See § 944.28(1), Fla. Stat. (1989-1999).

Id. at 892. (Emphasis supplied.) Due to the interrelatedness of the sentences scored on a single scoresheet under the guidelines, it makes sense that the Legislature would intend that forfeiture penalty to be applied upon revocation of a related probation. Accordingly, there is no basis for Gibson to receive his time served from the prior incarceration but to avoid the forfeiture penalty under section 944.28(1).

3. The Dissent in Gibson

As part of his argument, Gibson adopts the reasoning of the dissenting opinion in the case below. Specifically, Gibson contends that by applying a forfeiture penalty in case number 93-360 based on gain time accrued in case numbers 93-216 and 93-297, department has, in essence, "amalgamated" his separate sentences into one general sentence in violation of section 775.021(4) and Florida Rule of Criminal Procedure 3.701(d)(12). The department has done no such thing. The department has done nothing more than follow the law and the order of the sentencing court. The sentencing court awarded Tripp credit which included not only time served but unforfeited

gain-time. The department applied the credit and, pursuant to its lawful authority under section 944.28(1), forfeited the gain-time. The department is neither permitted to refuse to follow sentencing orders nor is it permitted to ignore legislative mandates. See Moore v. Pearson, 789 So.2d 316, 319 (Fla. 2001)(DOC violates the separation of power doctrine when it refuses to carry out the sentence imposed by the court). If Gibson is dissatisfied with the effect of the forfeiture penalty, he must convince this Court to overrule Tripp and its progeny. Moreover, compliance with the sentencing guidelines does not offend the rule against general sentences. In Dorfman v. State, 351 So.2d 954 (Fla. 1977), this Court held that a single general sentence may not be imposed for two or more crimes. Here there is no "general sentence". Gibson received distinct sentences for each of his offenses. The fact that these individual sentences are viewed in relation to each other and comprise a single interrelated unit under the sentencing guidelines does not convert them into a "general sentence". The sentences imposed are distinct in that they must be viewed individually against the statutory maximum limitations for the offense and then as part of the interrelated unit again against the maximum permitted range of the guidelines. Gibson's argument is unavailing.

To the extent that Gibson is also adopting the remainder of the rationale contained in the dissenting opinion, the department adopts and incorporates by reference its arguments contained on sections 1 and 2.

CONCLUSION

For the foregoing reasons, the certified question certified should be answered in the affirmative and the opinion below affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **ANSWER BRIEF OF APPELLEE/RESPONDENT** has been furnished by U.S. Mail to **MICHAEL ROBERT UFFERMAN, ESQUIRE**, Robert Augustus Harper Law Firm, P.A., 325 West Park Avenue, Tallahassee, Florida 32301-1413, on this 21st day of January, 2003.

_____
SUSAN A. MAHER

Certificate of Typeface Compliance

I hereby certify that this document was prepared using Courier New 12 point font.

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SUSAN A. MAHER

IN THE SUPREME COURT OF FLORIDA

THOMAS B. GIBSON,

Appellant/Petitioner,

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FLORIDA DEPARTMENT OF CORRECTIONS,

Appellee/Respondent.
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APPENDIX

Appendix A	August 2, 2000, Order in Case No. 93-360CF, 10th Judicial Circuit, Hardee County, granting defendant Gibson's Motion for Correction of Sentence
Appendix B	Sentencing Guidelines Scoresheet, Case Nos. 93-216CF, 93-297CF, 93-360CF