IN THE SUPREME COURT OF THE STATE OF FLORIDA

DWAINE WOODSON,

Appellant,

vs. Case No. SC04-56

STATE OF FLORIDA,

Appellee.

_____/

APPEAL FROM THE FIFTH DISTRICT COURT OF APPEAL

INITIAL BRIEF ON THE MERITS OF APPELLANT

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STATEMENT OF THE CASE AND FACTS

The State charged Appellant, Mr, Dwaine Woodson, with one count of lewd or lascivious battery, one count of lewd or lascivious conduct, and contributing to the delinquency of a minor. (Vol. 1 p. 75) Mr. Woodson entered into a plea agreement wherein he pled no contest to the charge of lewd or lascivious battery and the State filed a Nolle Prosequi on the remaining two charges. (Vol. 1 p. 90) Pursuant to the terms of the plea agreement, the court sentenced Mr. Woodson to a downward departure sentence on July 17, 2000. (Vol. 1 p. 86-104-105) The court adjudicated Mr. Woodson guilty and sentenced him as agreed to fifty one (51) weeks in jail with credit for 339 days time served. (Vol. 1 p. 104) The court also ordered him to serve three years on probation. The probation order included the conditions that he complete all conditions for sex offender probation pursuant to section 948.03, Florida Statutes. (Vol. 1 p. 104) Neither the trial court nor the applicable law imposed any time limit as to when he must complete treatment or HIV testing other than the time of the probationary period.

On August 6, 2002, the State filed a violation of probation affidavit and alleged that Mr. Woodson violated his probation by failing to pay the $20.00 cost of

probation supervision monthly charge with an outstanding balance of $720.00, that he failed to actively participate and successfully complete a sex offender treatment program, and that he failed to submit to an HIV test. (Vol. 1 p. 106)

Additionally, on October 21, 2002, the State filed an amended violation of probation affidavit alleging that Mr. Woodson also had moved from his approved residence. (Vol. 1 p. 112) The amended allegation was dismissed by the court as the State never provided any evidence of that alleged violation at the violation of probation hearing. (Vol. 1 p. 44)

The court heard testimony at a violation of probation hearing. (Vol. 1 p. 3-70) The State called Randy Forrest who testified that he instructed Mr. Woodson on his probation orders on July 31, 2001 and informed Mr. Woodson that he was required to complete a sex offender treatment program and counseling as one of the conditions of his probation and that he was required to submit to an HIV test. (Vol. 1 p. 5) He also instructed Mr. Woodson that he was required to pay the Department of Corrections. (Vol. 1 p. 5) Mr. Forrest acknowledged that he did not provide Mr. Woodson with dates by which the HIV testing and the sex offender counseling had to be completed as no dates were provided in the court order.(Vol. 1 p. 10) Regarding the failure to pay costs of supervision, Mr. Forrest testified that if a defendant were on a budget, it would be more important to first pay for the sex offender counseling than

to pay for the costs of supervision. (Vol. 1 p. 13)

The State next called Mr. Woodson to testify. (Vol. 1 p. 14-15) He did not pay the costs of supervision because he had other payments that he was attempting to budget regarding his probation. (Vol. 1 p. 15-15) At the time the costs of supervision at issue in the instant case were due, Mr. Woodson also had to pay for counseling costs, court costs, costs for the public defender and an $40.00 a month cost of supervision for a county probation order under which he was also being supervised. (Vol. 1 p. 14015) He also helped to support his mother with whom he lived, and his adult daughter that also lived with his mother. (Vol. 1 p. 14-15) In order to help him with all of the money he owed for the probation in the instant case and in the county probation case, he began working for a temporary agency. (Vol. 1 p. 15) Finally, he testified that he did not complete the sex offender program because he was terminated from the program. (Vol. 1 p. 17)

The State next called probation officer Sheila Jackson to testify regarding her supervision of Mr. Woodson. (Vol. 1 p. 18) Ms. Jackson began supervising Mr. Woodson on October 2001. (Vol. 1 p. 19) She mailed him a letter indicating he was required to provide proof of an HIV test and comply with his monetary requirements by June 5th. (Vol. 1 p 19) When the State moved the letter into evidence, counsel for Mr. Woodson objected on the grounds of relevance because there was no specified

date of completion in the court's probation order. (Vol. 1 p. 19-20) The court overruled the objection and admitted the letter into evidence. (Vol. 1 p. 20) Ms. Jackson further testified that she told Mr. Woodson that he would be violated if he failed to make the cost of supervision payment and that Mr, Woodson told her that he was getting an income tax refund check. (Vol. 1 p. 26)

Ms. Jackson testified that on June 5, she asked Mr. Woodson for the information that she had requested in the letter, and that he did not have the information, but rather gave her excuses. (Vol. 1 p. 21) She testified that he stated that his daughter had paid for the costs of supervision, and his daughter stated that she had forgotten to make the payment. (Vol. 1 p. 22) Finally, Ms. Jackson testified that Mr. Woodson never provided proof of HIV testing, and that he was terminated from his sex offender group because he was not participating and because he failed to make payments for the counseling. (Vol. 1 p. 22) Ms. Jackson verified that Mr. Woodson was working for a temporary agency, and testified that his income would fluxuate. (Vol. 1 p. 24) She testified that one month, he made $1,200.00 and another month he made $1,300.00. (Vol. 1 p. 24) Also, while Ms. Jackson was aware that Mr. Woodson was making some of the payments for his counseling she was not aware that he was paying an additional $40.00 a month for costs pursuant to a county probation order. (Vol. 1 p. 24) Ms. Jackson stated that she decided on the June 5th date based upon the

"rules of the department" and that the court order gave no date by which these conditions were to be satisfied. (Vol. 1 p. 29) Mr. Woodson was terminated from the sex offender program on May 30, 2002 and was violated in July of 2002. (Vol. 1 p. 30)

David Affolter has a contract with the ITM group. (Vol. 1 p. 30) ITM provides sex offender treatment for the Department of Corrections that was in charge of the sex offender counseling program where Mr. Woodson was receiving treatment. (Vol. 1 p. 30-31) Mr. Woodson was already a client in the group when Mr. Affolter began with ITM in January. (Vol. 1 p. 31) Mr. Woodson was terminated from the group on May 30, 2002 for lack of progress and for lack of payment. (Vol. 1 p. 31) Mr. Woodson did not complete his homework assignments and was not an active participant in the group. (Vol. 1 p. 32) He was very quiet in the group setting unless prompted by Mr. Affolter. (Vol. 1 p. 32) Mr. Affolter testified that sometimes, Mr. Woodson would sleep in group, but that usually, he was awake. (Vol. 1 p. 32, 41) Mr. Affolter discussed Mr. Woodson's behavior with him and Mr. Woodson said that it was difficult for him to participate. (Vol. 1 p. Mr. Affolter further testified that Mr. Woodson never had a belligerent or bad attitude, just that he appeared to be uninterested and unmotivated. (Vol. 1 p. 36, 38) 32)Mr. Affolter testified that although Mr. Woodson was reluctant to talk about his problems in the group therapy, such reluctance was a common problem and even expected in a sex offender therapy group.

(Vol. 1 p. 40)

Mr. Affolter testified that although Mr. Woodson did not complete his homework "module" assignments which included an autobiography and an "offense description," he had begun working on them but did not bring the completed assignments back to the group. (Vol. 1 p. 40) Mr. Woodson regularly attended the group therapy session, going seventeen (17) to eighteen (18) times and only missed three sessions in five months. (Vol. 1 p. 36) Mr. Affolter testified that Mr. Woodson's attendance was not as issue in his termination, nor was his behavior. (Vol. 1 p. 36)

Mr. Woodson was approximately $340.00 in arrears toward his payments for the ITM group counseling. (Vol. 1 p. 34) Although Mr. Affolter testified that Mr. Woodson told him on a number of occasions that he was having financial difficulties, Mr. Affolter terminated him from the group due to a lack of payment and a lack of progress. (Vol. 1 p. 34) Finally, Mr. Affolter testified that Mr. Woodson never stated that he would not complete the treatment if he were given the opportunity. (Vol. 1 p. 43)

After the State rested, Mr. Woodson then testified in his own defense. (Vol. 1 p. 45-56) He stated that although he was working for a temporary agency, he made only $6.00 an hour, and only had work approximately two days a week. (Vol. 1 p. 45) He tried to get additional employment, but was never successful toward that endeavor.

(Vol. 1 p. 53) On the days that he was not working with the temporary agency, he looked for work, but was unsuccessful. (Vol. 1 p. 53) Although he paid some of the money he owed toward counseling, he could not pay all that he owed because of all the other court costs he was paying, as well as the $40.00 a month for the county probation andthe help he provided for the support his mother and adult daughter. (Vol. 1 p. 46-47) Mr. Woodson testified that in addition to the above costs and expenses, he also paid his bills with the money he made from the temporary agency employment. (Vol. 1 p. 56)

Mr. Woodson has a tenth grade education. (Vol. 1 p. 46) He never refused to participate in treatment and he never fell asleep in therapy. (Vol. 1 p. 47) He testified that once, when he went to therapy directly from work, he arrived to counseling early and leaned back with his head against the wall before the therapy began. (Vol. 1 p. 47) He stated that his counselor probably thought that he was asleep. (Vol. 1 p. 47) Mr. Woodson testified that he thought he could benefit from counseling and would have completed counseling if he had been given the chance to "catch up financially." (Vol. 1 p. 48) He further testified that if possible, he would have enrolled in another program and that he would be willing to enroll in another program at the present time. (Vol. 1 p. 48) He stated that he completed the first "module" homework assignment, but not the second assignment. (Vol. 1 p. 48-49) In accordance with Mr. Affolter's testimony,

Mr. Woodson testified that he never refused to do the "modules" and that he never tried to disrupt the therapy class. (Vol. 1 p. 49) He testified that he tried to comply with all of the conditions of his treatment. (Vol. 1 p. 49)

Mr. Woodson testified that he was never given a date by the court in which he was to complete the HIV test. (Vol. 1 p. 49) He further testified that his initial probation officer informed him that although the court order stated that he was required to have an HIV test completed, he only had to have the test if the victim's family requested that the test be done. (Vol. 1 p. 55) Mr. Woodson had been tested for HIV, and entered into evidence a receipt from an HIV test that was accepted by the court. (Vol. 1 p. 50) Mr. Woodson stated that he never took the HIV receipt to Ms. Jackson, and that he never obtained the results of the HIV test because there was an additional $20.00 fee for the results for which he could not pay. (Vol. 1 p. 51) Mr. Woodson testified that he would make paying the $20.00 for the results a priority. (Vol. 1 p. 52)

After the conclusion of the testimony, the trial court found that Mr. Woodson had violated his probation. The trial court reasoned that sexual offender probation was different than a condition of probation imposed by a court, such as anger management or alcohol counseling. (Vol. 1 p. 64) The court stated:

"But the probation is an alternative to being incarcerated

> and it was the legislative finding and the intent of the legislature that persons did not have to be incarcerated if society could be assured that they were being supervised and treated and actively participating in treatment. When they then fell out of treatment it was time to impose incarceration."

(Vol. 1 p. 65)

The trial court sentenced Mr. Woodson to eleven (11) years in custody followed by four (4) years probation. (Vol. 1 p. 124) Mr. Woodson filed a timely notice of appeal. (Vol. 1 p. 134)

The Fifth District court affirmed the trial court's order in *Woodson v. State*, 864 So. 2d 512 (Fla. 5th DCA 2004)and, in so doing, certified conflict with *Young v. State*, 556 So. 2d 69 (Fla. 2d DCA 1990 and noted possible conflict with *Lawson v. State*, 845 So. 2d 349 (Fla. 2d DCA 2003) and *Lynon v. State*, 816 So. 2d 1218 (Fla. 2d DCA 2002). This appeal follows.

SUMMARY OF THE ARGUMENT

The trial court abused its discretion by finding that Mr. Woodson violated his probation when the evidence was insufficient to show a willful and substantial refusal to participate in the sex offender counseling program and when the State failed to prove that Mr. Woodson had an ability to pay his outstanding costs. Mr. Woodson's failure to complete the sexual offender program or obtain the results of the HIV test were not willful or substantial, where, after Mr. Woodson was discharged from the program, he expressed a willingness to continue in the program or complete some other form of sex offender counseling and the order did not specify the period for completing the program or the number of chances to obtain success.

The Fifth District Court of Appeal engages in "judicial legislation" when it reads into the statute an explicit prohibition of a probationer completing the mandatory conditions "toward the end of the probationary period", when such a prohibition is nowhere contained in the written law. Because the statute does not prohibit a probationer from completing the mandatory conditions "toward the end of the probationary period," it is a denial of Mr. Woodson's federal and state constitutional rights to due process of law to revoke probation on the grounds that Mr. Woodson cannot by law compete the terms of probation "toward the end of the probationary period" when nether the trial court nor the statute imposes any time frame to complete

the conditions other that the length of the probationary period.

ARGUMENT

THE DISTRICT COURT ERRED IN AFFIRMING THE TRIAL COURT'S ORDER REVOKING APPELLANT'S ORDER OF PROBATION; THE TRIAL COURT ABUSED ITS DISCRETION IN CONCLUDING APPELLANT WILLFULLY AND SUBSTANTIALLY VIOLATED PROBATION; THE FIFTH DISTRICT'S CONCLUSION THAT A PROBATIONER AS A MATTER OF LAW IS PROHIBITED FROM COMPLETING THE CONDITIONS OF SEXUAL OFFICER PROBATION TOWARD THE END OF THE PROBATIONARY PERIOD EXCEEDS THE COURT'S AUTHORITY AND VIOLATES APPELLANT'S FEDERAL AND STATE RIGHTS TO DUE PROCESS OF LAW.

The trial court abused its discretion by finding that Mr. Woodson violated his probation when the evidence was insufficient to show a willful and substantial refusal to participate in the sex offender counseling program and when the State failed to prove that Mr. Woodson had an ability to pay his outstanding costs. *See Yance v. State*, 547 So. 2d 1040 (Fla. 1st DCA 1989), *Young v. State*, 566 So.2d 69 (Fla. 2d DCA 1990) *Knight v. State*, 801 So. 2d 160 (Fla 2d DCA 2001) "A violation of community control which triggers revocation must be both willful and substantial, and the willful and substantial nature of the violation must be supported by the greater weight of the evidence." *Jones v. State*, 744 So.2d 537 (Fla. 2d DCA 1999) *citing Hightower v. State*, 529 So.2d 726 (Fla 2d DCA 1988)

The instant case is similar to *Salzano v. State*, where the Second District held that it was an abuse of discretion to find a willful and substantial violation of probation

where a defendant expressed a willingness to complete or continue with a program and where the order of probation did not specify a date certain for compliance with the program. *Salzano v. State*, 664 So.2d 23 (Fla 2nd DCA 1995); *O'Neal v. State*, 801 So.2d 280 (Fla. 4th DCA 2001) *quoting Jones v. State*, 744 So. 2d 537 (Fla.2d DCA 1999)("defendant's failure to complete a residential treatment program was not willful or substantial, where, after defendant was discharged from the program, he expressed a willingness to continue in the program or complete some other form of drug treatment and the order did not specify the period for completing the program or the number of chances to obtain success") In *Melecio v. State*, the defendant was ordered to complete an anger management course as a special condition of community control. As with the probation order with which Mr. Woodson was required to comply, the community control order did not set a date or specify a time frame in which the course had to be completed. On appeal, the First District reversed the trial court's finding of a violation of probation and stated that:

> because the community control order failed to specify a time period in which the anger management course requirement was to be satisfied and because the term of community control had not yet expired, it was improper to find a violation of community control on this ground.

Melecio v. State, 662 So. 2d 408 (Fla. 1st DCA 1995)

In the instant case even though there was no date for completion of the sex offender counseling and no date by which the HIV test had to be completed, the trial court found that Mr. Woodson had violated his probation. The trial court reasoned that the sexual offender probation was different than a condition of probation imposed by a court, such as anger management or alcohol counseling. (Vol. 1 p. 64) The court stated:

> "But the probation is an alternative to being incarcerated and it was the legislative finding and the intent of the legislature that persons did not have to be incarcerated if society could be assured that they were being supervised and treated and actively participating in treatment. When they then fell out of treatment it was time to impose incarceration."

(Vol. 1 p. 65) The court's premise is unsupported and contradictory. Everything said about the sex offender probation applies directly to other types of probationary conditions, especially to treatment programs for alcohol and or drugs that are made special conditions of a probation order by a court. Many deaths through violence and car accidents are caused by untreated addicts. Similarly, if such persons are given the benefit of probation, society must "be assured that they were being supervised and treated and actively participating in treatment." Yet, binding authority clearly dictates that it is an abuse of discretion to find a willful and substantial violation of probation where a defendant has expressed a willingness to complete or continue with a program

where the order did not specify a date for compliance. *Palma v. State*, 830 So.2d 201 (Fla.5th DCA 2002); *Edgerton v. State*, 703 So. 2d 1249 (Fla. 5th DCA 1998)(distinguishing *Gibbs v. State*, 609 So. 2d 76 (Fla 1st DCA 1992)); *O'Neal v. State*, 801 So.2d 280 (Fla. 4th DCA 2001); *Salzano v. State*, 664 So.2d 23 (Fla 2d DCA 1995); *Butler v. State*, 775 So. 2d 320 (Fla 2d DCA 2000); *Jones v. State*, 744 So. 2d 537 (Fla.2d DCA 1999); *Melecio v. State*, 662 So. 2d 408 (Fla. 1st DCA 1995); *Gamble v. State*, 737 So.2d 1160 (Fla. 1st DCA 1999); *Muthra v. State*, 777 So. 2d 1067 (Fla 3d DCA 2001); *Mitchell v. State*, 717 So. 2d 609 (Fla 4th DCA 1998)(distinguishing *Melecio.*)*; Gibbs v. State*, 609 So. 2d 76 (Fla 1st DCA 1992)

In direct contradiction to established law, the court concluded that even without a date of completion, a defendant could be prematurely violated for failing to complete a condition of probation. If the trial court believed that there should be a specific time in which certain special conditions of a probationary order be completed, then the trial court had the responsibility to simply include a completion date in the probation order. In the instant case, the trial court set no date of completion of the probationary conditions Mr. Woodson was found to have violated. Consequently, the affidavit of the violation of probation was premature and the court's finding that Mr. Woodson willfully violated his probation was unlawful as Mr. Woodson- by the very language of the court's order- had until the end of his probation term to comply with sex

offender counseling and with getting an HIV test. The trial court's findings that the legislature's intent that the HIV test results not wait until the end of the probationary period is unsupported, as nothing in the statute indicates such an intent on behalf of the legislature.

The controlling law regarding this issue hinges on a two-pronged test: 1)Whether the defendant expressed a willingness to complete or continue with a program, and; 2) whether the order of probation specified a date certain for compliance. *O'Neal v. State*, 801 So.2d 280 (Fla. 4th DCA 2001); *Salzano v. State*, 664 So.2d 23 (Fla 2nd DCA 1995); *Butler v. State*, 775 So. 2d 320 (Fla 2d DCA 2000) In *Dunkin v. State*, 780 So. 2d 223 (Fla 2d DCA 2001) the Court specified a date by which sex offender treatment had to be completed, specifically, within the first three years of his supervision. The Second District reversed the trial court's revocation of probation because the probation order failed to state that the treatment had to be successfully completed on the first try, or how many chances the defendant would be given to complete the treatment successfully. *Dunkin*

The evidence in the instant case is uncontroverted: Mr. Woodson stated that he believed that he would benefit from the counseling and that he wanted to complete the counseling, and, the order of probation did not specify a completion time. Therefore, the trial court's finding that Mr. Woodson's failure to complete sex offender

counseling was in error.

What is especially troubling in the instant case are the reasons that Mr. Affolter used to terminate Mr. Woodson from sex offender counseling. His main reason was that Mr. Woodson was not participating, yet he stated that this was common and expected in this type of group counseling, and even admitted that Mr. Woodson confided to him that he was having trouble participating. Mr. Woodson's attendance was excellent, and he was in no way belligerent and had no type of bad attitude in the group therapy. Where a probationer makes reasonable efforts to comply with a condition of probation, violation of the condition cannot be said to be deemed willful. *Lynom v. State*, 816 So. 2d 1218 (Fla 2d DCA 2002) Mr. Woodson attended the therapy, had a good attitude and was not belligerent. He testified that he wanted to complete therapy and that he thought he could benefit from therapy. Additionally, his reluctance to participate was a common theme for men in sex offender group therapy, and he confided to his counselor that he was having trouble participating. Mr. Woodson testified that he never refused to do the "modules" assigned by the therapist and that he tried to comply with all of the conditions of treatment. (Vol. 1 p. 49) Mr. Affolter's testimony supported Mr. Woodson's assertions. Mr. Affolet testified that Mr. Woodson did not complete the assignments, not that he in any way refused to attempt them. As Mr. Woodson was reasonably trying to comply with therapy, the

trial court erred by finding that his termination due to lack of participation was proper. Additionally, the trial court's determination that Mr. Woodson's termination from counseling due to being in financial arrears was a violation of probation was an abuse of discretion; especially in light of Mr. Woodson's repeated disclosure to Mr. Affolter that he was having financial difficulties. (Vol. 1 p. 35) Mr. Woodson had made payments to the counseling program in a reasonable effort to comply with the terms of his probationary order.

Similarly, the trial court erred by finding that Mr. Woodson willfully and substantially violated is probation by failing to pay for his costs of probation supervision. "To prove a violation of probation based on failure to pay court ordered costs, the State must prove that the probationer had the ability to pay in order to show a willful violation." *Knight v. State*, 801 So.2d 160 (Fla 2d DCA 2001) quoting *Robinson v. State*, 773 So.2d 566 (Fla 2d DCA 2000) In the instant case, Mr. Woodson testified that two months into his probationary term, he secured employment with a temporary agency. The agency had work for him twice a week, and he tried to secure additional employment but was unsuccessful.

He had tremendous financial obligations outstanding as a result of the probation order in the instant case and as a result of helping to support his mother and adult daughter and as a result of a county probation order that he was simultaneously under.

He testified that he was trying to pay money where he could, and that he had paid some of his counseling costs. Mr. Affolet confirmed that he had indeed made payments toward his counseling, even though at the time he was terminated from the program, he was in arrears. Even his probation officer testified that if a probationer were on a limited budget, it would be more important to pay for the court ordered counseling before paying for the costs of supervision. (Vol. 1 p. 13) This is exactly what Mr. Woodson did. Because Mr. Woodson made more than reasonable attempts to comply with the terms of the probation order; because he expressed a desire to continue and complete sex offender counseling, and because the order of probation failed to specify a date by which the special conditions of probation were due, the trial court abused its discretion by finding that Mr. Woodson willfully and substantially violated his probation.

The Fifth District Court of Appeal affirmed the trial court's order and in so doing expressly rejected Mr. Woodson's argument that revocation was improper when the trial court had not specified that he complete the required treatment and obtain an HIV test within time period other than the three year period of probation. The District Court held that the legislative intent of section 958.03(5), Fla. Stat. (2000) was to "require[]" "the offender . . . to undertake immediate compliance with the mandatory conditions" and that section 958.03(5) did not require the trial court to define the

number of attempts or establish time parameters for compliance. *Woodson v. State*, 864 So. 2d 512, 516 (Fla. 5th DCA 2004). While acknowledging that "the Legislature has clearly indicated that the emphasis of sex offender probation is treatment of the offender", *id.*, the District Court reasoned that "[i]t makes no sense" to allow a sex offender to undertake the required treatment "toward the end of the probationary period" as to do so does not protect society as well as if the offender were to start treatment immediately. *See id.* The District Court also expressed a fear of "mischievous manipulation by the offender" if the offender is allowed additional chances for treatment in the future after a willful failure to complete a treatment program.. *Id.* It should be noted that, as the record shows, Mr. Woodson did "undertake immediate compliance" and in no manner was engaged in any "mischievous manipulation" of the court order. The District Court simply raised these scenarios in its discussion of legislative intent.

In effect, the District Court ruled section 948.03(5) prohibits as a matter of law a probationer from having more than one chance at completing the requirements even if the term of probation has not yet expired. According to the District Court's ruling, the statute imposes a requirement of immediate compliance. By so ruling, the District Court has overstepped its authority as a court. Section 948.03(5) does not require the probationer to complete treatment or HIV testing immediately. The District Court's

expressed policy concerns are admittedly valid, however, these concerns cannot justify a court to impose law that was not enacted by the Legislature. The Court's policy concerns are a matter that should be addressed by the Legislature. The District Court engages in "judicial legislation" when it reads into the statute an explicit prohibition of a probationer completing the mandatory conditions "toward the end of the probationary period", *Woodson*, at 516, when such a prohibition is nowhere contained in the written law.

Because the statute does not prohibit a probationer from completing the mandatory conditions "toward the end of the probationary period", it is a denial of Mr. Woodson's federal and state constitutional rights to due process of law to revoke probation on the grounds that Mr. Woodson cannot by law compete the terms of probation "toward the end of the probationary period" when nether the trial court nor the statute imposes any time frame to complete the conditions other that the length of the probationary period.

Should this Court finds that even one the trial court's findings of a violation of probation were improper (Mr. Woodson maintains that all of the findings of violations of probation were improper) this cause must be remanded as it is unknown if the trial court would impose the same sentence. *Moxley v. State*, 689 So. 2d 941(Fla 4th DCA 1997)

CONCLUSION

For above-stated reasons, Mr. Woodson requests that this Honorable Court reverse the judgment of the Fifth District Court of Appeal.

Respectfully Submitted,

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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, Charles Crist 444 Seabreeze Blvd, Fifth Floor, Daytona Beach, Florida, 32118 via his basket at the Fifth District Court of Appeal and mailed to Mr. Dwaine L. Woodson, No. X32139, Wakulla C. I., 110 Melaleuca Drive, Crawfordville, FL 32327 on this 6st day of March 2004.

CERTIFICATE OF COMPLIANCE

The undersigned counsel hereby certifies that this brief complies with the font requirements of rule 9.210(a)(2) Fla. R. App.P.

_____

For: A.S. ROGERS
Assistant Public Defender