IN THE SUPREME COURT OF THE STATE OF FLORIDA

SAMMY LEE LAWSON,

Petitioner,

v.

Case No. SC06-2423
5th DCA No. 5D05-2312

STATE OF FLORIDA,

Respondent.
_____/

ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

MERITS BRIEF OF RESPONDENT

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STATEMENT OF THE CASE AND FACTS

Respondent relies upon the following:

Petitioner, Sammy Lee Lawson (Lawson), was charged in both case numbers 2003-CF-1301-A-02 and 2003-CF-1302-A-02 with one count each of possession of cannabis with intent to sell and one count of sale of cannabis. (R11,106, Vol I). Lawson entered into a plea agreement on June 1, 2004, wherein he agreed to enter a plea in both cases to two counts of possession of cannabis with intent to sell and, in return, he would receive a five-year suspended sentence on the condition that he complete three years of drug offender probation. (R23-26, Vol I). He was sentenced pursuant to the plea agreement on June 1, 2004. (R35-43,120-128, Vol I). Condition 40 in the order of probation, which Lawson was later accused of violating, specifically provided:

> You must enter into, participate in, and successfully complete a [] substance abuse [] alcohol abuse [] Drug Abuse [] Other ___ evaluation and any treatment program subsequently prescribed by the treatment agency to which you are referred, including aftercare program, and be financially responsible for any treatment rendered.

(R38,123, Vol I).

On January 21, 2005, affidavits of violation of drug offender probation were filed in each case alleging Lawson had failed to pay his costs of supervision and failed to successfully complete or remain in drug/alcohol treatment.

(R44,129, Vol I). Warrants were issued and executed the same day. (R45,52-53,130, Vol I). Amended violation of probation affidavits were filed on April 19, 2005, which alleged the following violations of probation:

> Violation of Condition Two (2) of the Order of Probation, by failing to pay the State of Florida the amount of $50.00 per month toward cost of supervision, plus a 4% surcharge, unless otherwise exempted, in accordance with Section 948.09, Florida Statutes, and as grounds for belief that the offender violated probation, Officer McSweeney states that the offender is $400.00 in arrears as of January 19, 2005.
>
> Violation of Special Condition Forty (40) of the Order of Probation, by failing to successfully complete or remain in drug/alcohol treatment until the provider determines that treatment is no longer necessary, and as grounds for belief that the drug offender violated his probation, officer McSweeney states that the offender was unsuccessfully discharged from The Western Judicial Drug Treatment on January 19, 2005, as told to Officer McSweeney by Linda Carr on January 19, 2005.
>
> Violation of Condition Five (5) of the Order of Probation, by failing to live and remain at liberty without violating any law by committing the criminal offense of Ct I: Possession of Crack Cocaine with Intent to Sell Within 1000 feet of a Church, Ct II: Sale of Crack Cocaine within 1000 feet of a church on 01/04/05, in Lake County, Florida, and as grounds for belief that the offender violated his probation, Officer McSweeney states that the offender was arrested on 04/11/05, for the said offense by Lake County Sheriff's Office, as told to Officer

> McSweeney by the Lake County Sheriff Office Arrest Report.

(R59,135, Vol I).

Circuit Judge Mark J. Hill conducted a violation of probation hearing on June 1, 2005. John McSweeny (McSweeny), Lawson's drug offender probation officer, revealed that he had instructed Lawson on the terms of his probation on July 16, 2004. (R152-153, Vol II). Lawson signed an acknowledgement of the conditions of his drug offender probation. Id. One of the conditions, condition 40, required Lawson to attend classes and complete the program at the Western Judicial Center (Western). (R153, Vol II). McSweeny was notified on November 23, 2004, by Linda Carr (Carr) from Western that Lawson had failed to attend one of the sessions. (R154, Vol II). According to Carr, Lawson had been terminated from the program, which was a violation of Lawson's probation. Id. However, McSweeny spoke to a representative from Western and was able to reinstate Lawson with the understanding that he would not miss any further classes, or he would be terminated from the program completely. (R154-155, Vol II). According to McSweeny, Lawson understood that if he were terminated from the program, his probation would be violated. (R155, Vol II).

McSweeny explained that it was the policy at the Western that if a client missed three classes, they were terminated from

the program. Id. It was McSweeny's understanding that a fair amount of effort was made to help Lawson succeed in the program. Id.

In response to questioning from the court, McSweeny addressed the other conditions, advising the court that Lawson had not made even one payment on his costs of supervision. (R156, Vol II). McSweeny explained that Lawson had employment issues, which he had discussed with Lawson in the context of Lawson's failure to pay any of his costs of supervision. Id. The trial court also noted that on the most recent arrest report, Lawson indicated he was a laborer, not that he was unemployed. (R158, Vol II). As far as the new law violation, the State chose not to proceed on that condition at the time, although the State intended on taking the new law violation to trial. (R156-157, Vol II).

Carr, from Western, also testified at the hearing. (R160, Vol II). Carr identified Lawson as a client at Western. Id. Lawson enrolled in a substance abuse program in August. Id. This program required Lawson attend twelve classes. (R162, Vol II). However, Lawson had several absences, which she believed were due to transportation problems. (R160, Vol II). Usually, after the third absence, a person is eligible for termination, but they were trying to work with Lawson. Id. However, after Lawson's ninth absence in November, Lawson was terminated from

the program. Id. Carr explained that they agreed to reinstate Lawson with the understanding that he could not miss any more classes or he would be terminated which would violate his probation. (R161, Vol II). After reinstatement, Lawson attended seven classes consecutively, and then he missed a class. Id. Accordingly, as agreed, Lawson was terminated on January 19th. Id.

Lawson testified that he had a job, and he had tried to transfer his probation. (R163, Vol II). He also had other classes he was taking, including the batterers and abuse program. Id. Additionally, he had to serve 120 days in jail, so he did not see the purpose in starting a job. Id. Lawson indicated that he did not pay any costs of supervision because he was unemployed. Id. Lawson missed the class after attending seven consecutively because he did not have a ride, and when he called Western, an answering machine picked up his call. (R164, Vol II).

In explaining why he missed nine classes, Lawson claimed that he figured after he missed three classes, he was already kicked out of the program. (R164, Vol II). However, after speaking to his probation officer, he called the program and learned he would be able to return to the program. Id. When asked again, Lawson's only guess as to the cause of his missing nine classes was transportation issues. Id.

Defense counsel argued that there was no willful violation since no specified time was given for Lawson to complete the substance abuse program, and three years remained on his probationary term, so Lawson could have sought another program. (R165, Vol II). Further, Lawson did not have the ability to pay and had three years left to pay; as such, Lawson did not willfully and substantially violate his probation. Id.

The trial court orally pronounced the following:

> The Court will find that the defendant is in violation of his probation, a substantial violation. Officer McSweeny from the Department of Corrections testified that he was the supervisor of this defendant, that he was instructed on 7/16/04 of the conditions of his probation, one of those conditions being condition 40. The defendant was on drug offender probation, was assigned to a particular class at Western Judicial, and that he was unsuccessfully discharged. His reasons for his absences are not persuasive to this Court. Therefore, he is in violation of his probation.

(R165, Vol II). Also on June 1, 2005, an order of revocation of drug offender probation was rendered, which provided:

> Violation of drug offender probation re: condition (2), (40) & (5) as sworn to by drug offender probation officer John J. McSweeney in affidavit of April 25, 2005 and being sentenced to five (5) years department of corrections with credit for county jail time and gain time earned.

(R78,147, Vol I). Lawson was sentenced to two concurrent terms of five years incarceration (which had been suspended) in the

Department of Corrections, with credit for time served. (R74-75,145-146, Vol I; R165-166, Vol II).

In an opinion affirming the trial court's revocation of Petitioner's drug offender probation, the Fifth District Court of Appeal certified the following question as a matter of great public importance:

> DOES A TRIAL COURT ABUSE ITS DISCRETION IN FINDING A DEFENDANT, WHO IS DISCHARGED FROM A COURT-ORDERED DRUG TREATMENT PROGRAM FOR NONATTENDANCE, IN WILLFUL VIOLATION OF PROBATION WHEN THE SENTENCING COURT DID NOT SPECIFY THE NUMBER OF ATTEMPTS THE DEFENDANT WOULD HAVE TO SUCCESSFULLY COMPLETE THE PROGRAM AND IMPOSE A TIME PERIOD FOR COMPLIANCE?

Lawson v. State, 941 So. 2d 485, 492 (Fla. 5th DCA 2006).

SUMMARY OF THE ARGUMENT

This Court should answer the certified question in the affirmative. The Fifth District Court of Appeal properly found that Petitioner's unwillingness to abide by the condition that he successfully complete or remain in drug treatment constituted a valid basis for violation. It is apparent that Petitioner is not amenable to treatment or supervision, his violations of his conditions of drug offender probation were willful and substantial, and the trial court did not abuse its discretion by revoking his probation based on the willful and substantial violation. Finally, Petitioner's advocation of a per se rule that the trial court can never find a willful and substantial violation for being terminated from a substance abuse treatment program for nonattendance where the condition does not specify the number of attempts or the time period allowed for successful completion is not in accord with Florida law.

ARGUMENT

POINT OF LAW

THIS COURT SHOULD ANSWER THE CERTIFIED QUESTION IN THE AFFIRMATIVE AS THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY REVOKING LAWSON'S PROBATION.

In Lawson v. State, 941 So. 2d 485 (Fla. 5th DCA 2006), the Fifth District Court of Appeal (DCA) concluded that a trial court has the discretion to find a willful and substantial violation of probation even where a trial judge has not set time parameters for a probationer to comply with the condition of drug offender probation that he enter in, participate in, and successfully complete a substance abuse program. Id. at 491-492. Further, where it is clear that a probationer must undertake compliance with the court-ordered treatment as soon as he or she can be placed into a substance abuse program, and if a probationer fails to do so, a trial court has the discretion to revoke probation, even where additional time is remaining on his probationary period. Id. In this same vein, the trial judge also has the discretion to permit a probationer additional opportunities where a probationer evidences a willingness to try again. Id.

The Fifth DCA certified the following question to be a matter of great public importance:

> DOES A TRIAL COURT ABUSE ITS DISCRETION IN FINDING A DEFENDANT, WHO IS DISCHARGED FROM A COURT-ORDERED DRUG TREATMENT PROGRAM FOR NONATTENDANCE, IN WILLFUL VIOLATION OF PROBATION WHEN THE SENTENCING COURT DID NOT SPECIFY THE NUMBER OF ATTEMPTS THE DEFENDANT WOULD HAVE TO SUCCESSFULLY COMPLETE THE PROGRAM AND IMPOSE A TIME PERIOD FOR COMPLIANCE?

Lawson v. State, 941 So. at 492. This Court has jurisdiction. See art. V, § 3(b)(4), Fla. Const.; Fla. R. App. P. 9.030(a)(2)(A)(v).

It is well established that "[p]robation is a matter of grace rather than right. The trial judge has broad discretionary power to grant as well as revoke probation." Diller v. State, 711 So. 2d 54, 55 (Fla. 5th DCA)(citing Robinson v. State, 442 So. 2d 284, 286 (Fla. 2d DCA 1983), rev. denied, 719 So. 2d 892 (Fla. 1998)). The evidence for revocation of probation need only be sufficient to satisfy the conscience of the court that the violation occurred. Rock v. State, 749 So. 2d 566, 567 (Fla. 3d DCA 2000). Before a trial court can revoke a defendant's probation, the state must prove by a preponderance of the evidence that the defendant willfully violated a substantial condition of his probation. State v. Carter, 835 So. 2d 259 (Fla. 2002); Thomas v. State, 760 So. 2d 1138 (Fla. 5th DCA 2000). As noted previously, whether a defendant’s violation of probation was willful and substantial is a question of fact and will not be reversed on appeal unless an abuse of discretion is

shown. Carter, 835 So. 2d at 262)(citing Canakaris v. Canakaris, 382 So. 2d 1197 (Fla. 1980).

The primary goals of probation are to impose conditions so that: (1) the probationer will be rehabilitated; (2) society will be protected from future criminal violations by the probationer; and (3) the crime victim's rights will be protected. Woodson v. State, 864 So. 2d 516 (Fla. 5th DCA), rev. dismissed, 889 So. 2d 823 (Fla. 2004); see also Grubbs v. State, 373 So. 2d 905, 909 (Fla. 1979)("Protection of the public is an important and proper consideration by the trial judge when determining whether probation or confinement should be imposed."); Bernhardt v. State, 288 So. 2d 490, 494 (Fla. 1974)("It is well settled that the primary purpose of probation is to rehabilitate the individual while he is at liberty under supervision."); Spry v. State, 750 So. 2d 123, 124-125 (Fla. 2d DCA 2000)("It is necessary to bear in mind the various purposes sought to be served by probation as a substitute for penitentiary custody. The freedom of the individual is only one of the desiderata. Rehabilitation and public safety are others.")(quoting from Sobota v. Williard, 247 Or. 151, 427 P.2d 758, 759 (1967)); Crossin v. State, 244 So. 2d 142, 145 (Fla. 4th DCA 1971)("The underlying purpose of probation is to give the individual a second chance to live within the rules of society and the law of the land during which time he can prove

that he will thereafter do so and become a useful member of society. A grant of probation is a matter of grace and not of right, such grant being subject to revocation at any time the court determines that the probationer has violated the terms and conditions thereof.").

A probationer who refuses to abide by his conditions should not be entitled to remain at large. Woodson, 864 So. 2d at 516; Cf. State ex rel. Roberts v. Cochran, 140 So. 2d 597, 599 (Fla. 1962)("[T]he offender is not entitled to remain at large if he persists in criminal tendencies. The trial judge who prescribes probation in lieu of immediate imprisonment is allowed a broad judicial discretion to determine whether the conditions of the probation have been violated, and, therefore, whether the revocation of probation is in order. While this discretion is not unbridled and should not be arbitrarily exercised, it is necessarily broad and extensive in order that the interests of society may be protected against a repeating offender or one who disregards the conditions stipulated for his remaining at large.)

Lawson contends that the trial court's failure to specify the number of attempts or impose a time period for compliance as part of the condition violated due process protections, in that Lawson was not given adequate notice that his failure to abide by this condition would result in a violation. Initially,

Respondent would note that this issue was never raised below, as Petitioner argued below that there was no willful violation since no specified time was given for Lawson to complete the substance abuse program, and since three years remained on his probationary term, Lawson could have sought to satisfy this condition by enrolling in another program. This is different from the due process claim raised herein, and, thus, the lack of notice argument has been unpreserved for appeal. See, e.g., Steinhorst v. State, 412 So. 2d 332 (Fla. 1982)("[I]n order for an argument to be cognizable on appeal, it must be the specific contention asserted as legal ground for the objection, exception, or motion below.") The fact that the notice issue was not included in the Fifth DCA's certified question underscores the fact that the notice issue was not raised below. As this precise challenge to Petitioner's revocation of probation was never made below, it is unpreserved for appellate review.

The Fifth DCA did address the notice issue after concluding that the contrary district court authority must be premising these decisions, *inter alia*, on the lack of sufficient notice. In Lawson, the Fifth DCA, relying upon Ertley v. State, 785 So. 2d 592 (Fla. 1st DCA 2001), and Britt v. State, 775 So. 2d 415 (Fla. 1st DCA 2001), concluded that:

> fair notice can be satisfied by conditions of probation that provide reasonable individuals

> of common intelligence the basis to know and understand its meaning.

Lawson, 941 So. 2d at 489. In other words, probationary conditions need to be clear enough that a reasonable person can comprehend them in a common sense manner, but the conditions do not have to be so specific as to provide for every possible contingency. Obviously, it is impossible to provide for every possible contingency, so the conditions need to be flexible and workable. As noted by Justice Pariente in the context of sex offender treatment programs:

> Because each treatment plan is individualized, it is not always realistic for the trial judge to specify time parameters for completion at the time of sentencing. Nevertheless, the probation officer should clearly communicate to the defendant, both in writing and verbally, the specific details of the individualized treatment plan so that there is no question that the defendant is specifically on notice of exactly what is expected and when.

Woodson, 889 So. 2d at 824 (Pariente, C.J., concurring). Similarly, with substance abuse treatment, an inflexible schedule would not serve either the purpose of drug offender probation or the probationer's need for treatment.

Here, as the Fifth DCA pointed out, Lawson was well aware that he was required to successfully complete his substance abuse treatment program. As part of his plea agreement, Lawson was required to successfully complete drug offender probation.

Section 948.001(4), Florida Statutes (2005), defines drug offender probation as "a form of intensive supervision . . . with individualized treatment plans." In fact, participation in, and completion of, specialized treatment plans developed by the Department of Corrections is a primary component of drug offender probation. See § 948.20(1), Fla. Stat. (2005)("The Department of Corrections shall develop and administer a drug offender probation program which emphasizes a combination of treatment and intensive community supervision approaches and which includes provision for supervision of offenders in accordance with a specific treatment plan.").

On July 16, 2004, Lawson was advised of the conditions of his drug offender probation by his probation officer, which included condition 40, that he “enter into, participate in, and successfully complete” a [substance abuse] treatment program and “any treatment program subsequently prescribed by the treatment agency to which you are referred.” Lawson began attending Western substance abuse program soon thereafter in August of 2004. However, after Lawson missed nine meetings (three absences usually resulted in termination from this program), Lawson was terminated from the program on November 23, 2004, due to lack of attendance. As the program Lawson was ordered to attend required twelve meetings and the testimony was that he missed nine of

his twelve meetings, or, in other words, that he had already missed seventy-five percent of his meetings.

Lawson's own testimony reveals that he understood he would be terminated from the program if he missed three meetings, as he claimed that one of the reasons he missed nine meetings was because he figured that he had already been kicked out after missing three meetings. Most importantly, when Lawson was advised that he could return to the program, he was put on notice that if he missed one meeting he would be terminated from the program, which would violate his probation. Furthermore, there was never any testimony or evidence that Lawson had made inquiries about other programs or attempted to reenter the Westside program.

Allowing a probationer to choose when he or she complies with the condition of probation that the probationer enter in, participate in, and successfully complete a substance abuse treatment program would not serve the goals of drug offender probation, especially where, as here, the probationer obviously requires substance abuse treatment, and even after Lawson was warned that he would be terminated and his probation violated if he missed one more meeting, Lawson still missed a meeting.

As the Fifth DCA pointed out, essentially, Lawson is arguing that he gets to decide when he submits to drug treatment and that he will decide how many chances he will have to

complete it. Lawson 941 So. 2d at 491. As explained by the Fifth DCA:

> We simply cannot accept the perverse notion that such decisions should be left to the whim or caprice of any criminal defendant, much less one like Lawson who has twice thumbed his nose at the trial court, his drug counselor, and his probation officer.

Id. at 491.

As noted by Lawson, the asserted conflict centers around the finding that drug offender probation can be willfully and substantially violated when a probationer is terminated from a substance abuse treatment program where there is time remaining on the probationary term. Lawson, 941 So. 2d at 487. This is so even where the date of completion or the number of attempts at compliance was not specified. Id. Lawson references several cases which hold that it is an abuse of discretion to find a willful and substantial violation based on the failure to complete a treatment program, where a defendant has expressed a willingness to complete some form of counseling, and the order did not specify the period within which to complete the program or how many chances he would be given to obtain success. See Quintero v. State, 902 So. 2d 236 (Fla. 2d DCA 2005)(trial court abused its discretion by finding willful and substantial violation for failure to complete a counseling program where no specification of time for completion); Mitchell v. State, 871 So. 2d 1040 (Fla.

2d DCA 2004)(unexcused absences from sex offender treatment offender program not willful and substantial violation where no specification when program should be completed or how many chances would be given to complete program); Dunkin v. State, 780 So. 2d 223 (Fla. 2d DCA 2001); O'Neal v. State, 801 So. 2d 280 (Fla. 4th DCA 2001)(no willful and substantial violation where defendant failed to complete batterers program); Butler v. State, 775 So. 2d 320 (Fla. 2d DCA 2000)(defendant's failure to enroll in GED classes was not a willful and substantial violation of his condition of probation where his failure to comply resulted from confusion regarding the requirement and because of a transportation problem, not because of a deliberate act of misconduct. Further, the condition did not specify a time by which classes were to begin and the probation officer did not specify a date certain for compliance); Salzano v. State, 664 So. 2d 23 (Fla. 2d DCA 1995)(abuse of discretion to find willful and substantial violation for failure to complete a residential alcohol program, where defendant expressed a willingness to complete some form of counseling, probation officer never explained that a condition of his community control was to complete the program and the order did not specify the period within which to complete the program or how many chances he would be given to obtain success).

A reading of the authority relied upon by Lawson reveals that some of these cases have facts which distinguish them from the instant case, while others provide very few facts, so it is impossible to distinguish them. An example of the former is found in Butler, where the failure to attend his GED classes resulted from confusion regarding the requirement and transportation problems. Id. at 321. Here, there was no lack of notice, as Lawson was put on notice after he was terminated from Western the first time that if he missed another meeting, he would be terminated and his probation violated. The Quintero opinion, on the other hand, has very few facts regarding appellant's violation of the condition requiring him to undergo domestic violence intervention treatment. Id. at 236. However, assuming there is conflict and these cases are correct, and a trial court *never* has the discretion to find a willful and substantial violation of probation where time parameters have not been set for a probationer to comply with the condition of drug offender probation requiring successful attendance and completion of a substance abuse program, these cases are not in accord with Florida law and should be reversed.

In State v. Carter, supra, this Court explained that:

> In the instant case, the district court improperly applied a per se rule when it relied on Moore and Sanders in reaching its conclusion that the failure to file a single monthly report as a matter of law is not a

> substantial violation, and thus not sufficient to justify a probation revocation. Such a holding means that under no circumstances could a failure to file a single report justify a revocation of probation. **Such a per se rule strips the trial court of its obligation to assess any alleged violations in the context of a defendant's case. Trial courts must consider each violation on a case-by-case basis for a determination of whether, under the facts and circumstances, a particular violation is willful and substantial and is supported by the greater weight of the evidence**. In other words, the trial court must review the evidence to determine whether the defendant has made reasonable efforts to comply with the terms and conditions of his or her probation.

Id. at 261(emphasis added). It is to the trial court that the discretion to find a willful violation is granted as "[t]he trial court is in a better position to identify the probation violator's motive, intent, and attitude and assess whether the violation is both willful and substantial." State v. Carter, 835 So. 2d at 262.

Thus, a per se rule prohibiting in all cases a trial court from finding a willful violation of drug offender probation merely because the court did not specify the number of attempts or impose a time period for compliance is inconsistent with the requirement that a trial judge consider each violation on a case-by-case basis for a determination that a particular violation is willful and substantial. In fact, the instant case is illustrative of just how such a per se rule could thwart the

goals of drug offender probation. Here, Lawson was terminated for missing nine meetings (where three absences usually required termination), and when he was allowed to return, he was specifically told he could not miss one meeting or he would be terminated from the program and his probation violated. The trial judge in this case specifically found Lawson's reasons for his absences to be unpersuasive. Thus, being fully on notice of the potential consequences, the termination was his fault.

As this Court pointed out in State v. Carter, 835 So. 2d at 261: "[t]he probation system operates under a tremendous workload. In order to maintain its effectiveness, all participants, including the defendants, must comply with the requirements imposed upon them." Petitioner willfully and substantially failed to comply with the court ordered condition which is at the heart of drug offender probation, i.e., substance abuse treatment. Accordingly, on the merits, the Fifth District's decision in this case should be affirmed.

Conditions of probation are not aspirations, and the timely fulfilling of these conditions is a prerequisite to remaining on probation. Probation does not anticipate an amnesty or vacation period where a probationer is not required to do anything to meet its requirements. The condition that a drug offender enter in, participate in, and successfully complete a substance abuse treatment program puts a probationer on notice what is expected

of him. Any drug offender granted the grace of drug offender probation should be required to immediately abide by these conditions not only to facilitate his or her rehabilitation, but, also, for the protection of society. Of course, the deal with the people of the State of Florida presupposes that the drug offender will abide by these conditions so that, in return, he or she is allowed to remain free in society. An essential part of that bargain, though, requires a drug offender to demonstrate that he or she is capable of rehabilitation in that the probationer actively seeks to become rehabilitated to avoid reoffending. For those whom drug abuse treatment is necessary, without attendance at the treatment, it is highly unlikely that the drug offender will become rehabilitated.

Based on the foregoing facts and authorities, this Court should answer the certified question in the affirmative. Additionally, Lawson's advocation of a per se rule that the trial court always abuses its discretion by finding a willful and substantial violation where a defendant who has been discharged from a court-ordered drug treatment program when the court does not specify the number of attempts the defendant would have to successfully complete the program and impose a time period for compliance, is not in accord with Florida law. Finally, it is apparent that Lawson is not amenable to treatment or supervision, his violation of drug offender condition

requiring substance abuse treatment was willful and substantial, and the trial court did not abuse its discretion by revoking his probation based on the willful and substantial violation. The Fifth District Court of Appeal properly found that Petitioner's unwillingness to abide by this condition of drug offender probation constituted a valid basis for revocation.

CONCLUSION

Based on the foregoing argument and authority, the State respectfully requests that this Honorable Court answer the certified question in the affirmative, thus affirming the Fifth District Court's opinion upholding the revocation of Lawson's probation.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Merits Brief of Respondent has been served by basket delivery to Tomislav D. Golik, Assistant Public Defender, counsel for Lawson, at 444 Seabreeze Blvd., Suite 210, Daytona Beach, Florida 32118, this _____ day of February, 2007.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 12-point Courier New, in compliance with Florida Rule of Appellate Procedure 9.210(a)(2).

Respectfully submitted,

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