

IN THE  
SUPREME COURT OF FLORIDA

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STATE OF FLORIDA,

Petitioner,

v.

ANTWAN JENKINS,

Respondent.

Case No. SC07-1738  
District Court Case Nos. 1D06-  
2052, 1D06-2054, 1D06-2057,  
1D06-2134, 1D06-2135 &  
1D06-2199

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**JURISDICTIONAL BRIEF OF RESPONDENT**

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**B. TABLE OF CITATIONS**

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### C. STATEMENT OF THE CASE AND STATEMENT OF THE FACTS.

Antwan Jenkins (hereinafter Respondent Jenkins) was placed on probation (fifteen years) in six separate case numbers. A condition of probation was that Respondent Jenkins complete a drug treatment program. The State subsequently alleged that Respondent Jenkins violated his probation because he was discharged from the drug treatment program. A revocation hearing was held and the trial court entered an order finding that Respondent Jenkins violated his probation by failing to complete the drug treatment program.

On appeal, the First District Court of Appeal reversed the trial court's order finding that Respondent Jenkins violated probation. *See Jenkins v. State*, 963 So. 2d 263 (Fla. 1st DCA 2007). In its opinion, the First District relied upon two grounds for reversal:

The only evidence of the conduct that purportedly led to appellant's discharge from Phoenix House was hearsay. Hearsay cannot be the sole basis for finding a violation of probation.

The order placing the appellant on probation did not, moreover, specify the time within which he was to complete the treatment program or limit the chances he had to succeed. As we recently said in *Campbell v. State*, 939 So. 2d 242 (Fla. 1st DCA 2006): "Courts have held that 'evidence of the failure to complete a counseling program is insufficient to establish a willful and substantial violation of probation if the condition in question does not specify a time for completion.'" *Id.* at 244 (quoting *Quintero v. State*, 902 So. 2d 236, 237 (Fla. 2d DCA 2005)).

*Jenkins*, 963 So. 2d at 263-64 (some citations omitted).

#### **D. SUMMARY OF ARGUMENT.**

The opinion below cited two grounds for reversing the order revoking Respondent Jenkins' probation – only one of which provides a basis for conflict jurisdiction. The Court should therefore decline to grant review in this case.

## E. ARGUMENT AND CITATIONS OF AUTHORITY.

**The opinion below cited two grounds for reversing the order revoking Respondent Jenkins' probation – only one of which provides a basis for conflict jurisdiction.**

In the opinion below, the First District Court of Appeal cited two grounds for reversing the order revoking Respondent Jenkins' probation: (1) Respondent Jenkins' probation was revoked solely on the basis of hearsay and (2) the condition requiring Respondent Jenkins to complete the drug treatment program did not specify a deadline for completion of the program. *See Jenkins v. State*, 963 So. 2d 263, 264 (Fla. 1st DCA 2007). Respondent Jenkins acknowledges that the district courts are in conflict regarding the latter ground (failure to set a deadline) and the issue is currently pending in this Court. *See Lawson v. State*, 954 So. 2d 27 (Fla. 2007). Nevertheless, the State has not alleged that there is a basis for the Court to review the district court's first ground for reversal (hearsay). The First District's conclusion that Respondent Jenkins' probation was revoked solely on the basis of hearsay was dispositive in this case and that ground – standing alone – provided the First District with a sufficient basis for reversal. Hence, the conflict ground was not a necessary aspect of the First District's opinion – the order revoking Respondent Jenkins' probation would have been reversed regardless of the resolution of the conflict ground. If the Court accepts jurisdiction and addresses the conflict ground, the Court would arguably be issuing an advisory opinion. The Court is prohibited from issuing advisory opinions except in rare circumstances.

*See Dep't of Revenue v. Kuhnlein*, 646 So. 2d 717, 721 (Fla. 1994) (recognizing that art. IV, § 1(c), Fla. Const., permits advisory opinions for the Governor in certain circumstances). *See also* art. V, § 3(b)(10), Fla. Const. (permitting advisory opinions for the Attorney General in certain circumstances).

## **F. CONCLUSION.**

Respondent Jenkins respectfully requests the Court to decline to exercise jurisdiction in the instant case.



## G. CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the foregoing instrument has been furnished to:

Assistant Attorney General Philip W. Edwards  
PL01, The Capitol  
Tallahassee, Florida 32399-1050

by U.S. mail delivery this 23rd day of October, 2007.

Respectfully submitted,

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xc: Antwan Jenkins

## H. CERTIFICATE OF COMPLIANCE

Undersigned counsel hereby certifies pursuant to Florida Rule of Appellate Procedure 9.210(a)(2) that the Jurisdictional Brief of Respondent complies with the type-font limitation.

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