IN THE SUPREME COURT OF FLORIDA

KENNETH ADAMS	)	
	)	
Appellant,	)	
	)	CASE NO. SC07-389
vs.	)	
	)	
STATE OF FLORIDA,	)	
	)	
Appellee.	)	
_____	)	

REPLY BRIEF ON THE MERITS

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TABLE OF CONTENTS

CONTENTS PAGE(S)

TABLE OF AUTHORITIES

Cases Page(s)

ARGUMENT

IT **WAS ERROR TO REVOKE PROBATION FOR FAILING TO COMPLETE A CONDITION OF**

PROBATION WHERE THE PROBATION ORDER DID NOT REQUIRE A TIME LIMIT OR NUMBER OF ATTEMPTS FOR COMPLETION OF THE CONDITION OF PROBATION.

JURISDICTION

Respondent claims because this court did not accept jurisdiction in Woodson v. State, 889 So. 2d 823 (Fla. 2004) this court does not have jurisdiction in this case. However, in Woodson (sex offender probation) conflict was sought with a dissimilar case. Whereas, in this case Adams seeks conflict review of other similar cases- Lynom v. State, 816 So. 2d 1218 (Fla. 2d DCA 2002); Dunkin v. State, 780 So. 2d 223 (Fla. 2d DCA 2001)(3 consecutive absences from sex offender treatment program) etc. Thus, unlike in Woodson this court has jurisdiction in this case.

MERITS

Respondent acknowledges that Lawson v. State, 32 Fla. L. Weekly 5659 (Fla. Oct 25, 2007) Ais not controlling to the facts and circumstances of the case at bar.@ Respondent=s brief at 21. Specifically, Respondent does not dispute the due process and notice discussion on pages 6-9 of Petitioner=s Brief on the Merits. However, respondent essentially argues that in Lawson, this court has created a per se rule that the trial court has the unbridled raw power to find violation of probation at any time where the probationer has not completed a treatment program-despite no bad faith on the probationer=s part. Admittedly some language in Lawson seems to permit such unbridled raw discretion over well-meaning probationers not acting in bad faith. However, Petitioner submits that Respondent has misinterpreted the spirit and true direction of this

court=s decision in Lawson. In Lawson this court did recognize due process and notice requirements and balanced them against a situation where the probationer was clearly not acting in good faith in completing the treatment program. The probationer has Acommonsense@ notice that good faith is required. However, even in Lawson, absent evidence of lack of good faith by the probationer, the probation cannot be revoked based on a bright line per se rule giving the trial court unbridled discretion:

> A defendant who unfortunately relapses while making good faith efforts at rehabilitation should be subject to a bright line rule requiring the automatic revocation of his or her probation no matter the circumstances.

31 Fla. L. Weekly at 5663. Respondent=s implicit request for unbridled discretion to revoke, in the absence of a probationer=s bad faith, should be rejected. The present case is a good illustration why such a per se rule should not apply.

There was no bad faith on the part of Petitioner. Petitioner testified he wanted to continue with the sexual offender program T31. Petitioner=s problem was that he was not financially able to pay for the treatment program. Respondent argues Petitioner had money but chose to spend it on things other than the treatment program. It is true that Petitioner spent money on shelter and food. Petitioner could have stopped eating and gone homeless. He would have died. The undisputed evidence showed Petitioner had no money other than for necessities for the treatment program. He worked at a car wash for $28 T26. He worked 15 days in the 2 months period T29. This works out to $170 per month after taxes. Petitioner gave 2 of the money to his retired mother to pay share of his rent T26, 29. This leaves $85 per month for food and initially some clothes (since he

was released from jail) T33.[1] Even living in the most minimal manner this leaves nothing for treatment programs. Petitioner did stop the program because he didn=t want to complete it. Petitioner stopped the program because he didn=t have money to pay for it T30. Petitioner indicated that he would have not violated if he could go without paying T31.[2] This was never disputed below. It was only after Petitioner violated that the program that the director indicated Petitioner will not be terminated him from the program for failing to pay T19. Unfortunately, Petitioner was never informed of this T30, T20, Lines 22-25.

This is not a bad faith probationer who was violated because of violating the Acommonsense@ notice that he act in good faith in completing the treatment program. Rather, it is a violation of someone acting in good faith but who can=t financially follow through with the program. The result is that after being violated Petitioner was once again sentenced to the same probation- but also given an additional 11 years in prison as punishment R75-77 for failing to be able to make his program payments and continue on with the program.

If it is believed that Petitioner is unamenable to the treatment program and probation - why continue to place Petitioner on probation? Petitioner=s reaction to the

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[1] Using the more generous number of $635 for two months leaves $320/mo minus taxes = 256/mo minus **2** to mother =$128 per month for food and clothing.

[2] Obviously, Petitioner took at the actions to enroll in the program and attend the first session. Things fell apart after Appellant was made aware of the fee schedule T14.

probation program was not due to bad faith but the simple fact he did not complete the program due to finances. Petitioner did not violate the commonsense notice that he not act in bad faith. Unless the evidence shows Petitioner was acting in bad faith, it was error to revoke his failure to complete a condition of probation where a time limit or number of attempts for completion of the treatment program was required in the probation order.

CONCLUSION

Petitioner respectfully requests this Court to quash the decision of the district court and to remand this cause for further proceedings.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished by courier to Georgina Jimenez, Assistant Attorney General, 1515 North Flagler Drive, Ninth Floor, West Palm Beach, Florida 33401 this _____day of November, 2007.

_____
Counsel for Appellant

CERTIFICATE OF TYPE SIZE AND STYLE

Counsel for appellant hereby certifies that the instant brief has been prepared with 14 point Times New Roman.

_____
Counsel for Appellant