

**IN THE SUPREME COURT OF THE STATE OF  
FLORIDA**

STATE OF FLORIDA,	)	
	)	
Appellee/Petitioner,	)	
	)	5th DCA Case No.
	)	5D07-1105
	)	
	)	Supreme Court Case No.
ROBERT RABEDEAU,	)	
	)	_____
Appellant/Respondent.	)	
_____	)	

AN APPEAL FROM THE DISTRICT COURT  
OF APPEAL - FIFTH DISTRICT

**RESPONDENT'S BRIEF ON THE MERITS**

JAMES S. PURDY  
PUBLIC DEFENDER  
SEVENTH JUDICIAL CIRCUIT

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**STATEMENT OF THE CASE AND FACTS**

The Respondent accepts the statement of the facts, and the procedural history of this case, as set forth in the Petitioner’s Merit Brief.

**SUMMARY OF ARGUMENT**

The question presented to this Court by *Gisi*,<sup>1</sup> and in the instant case, is the credit to be awarded for time served in prison prior to a resentencing occasioned by on revocation of probation. The ruling of the District Court *sub judice* expresses the fundamental principle that credit should be awarded for all sentences completed in such circumstances, because the function of concurrent sentences is to “enable a defendant to serve two or more sentences at a single time.”

The Petitioner argues that credit for jail time served while awaiting disposition is

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<sup>1</sup> *Gisi v. State*, 948 So. 2d 816, (Fla. 2<sup>nd</sup> DCA), rev. granted, 952 So.2d 1189 (Fla. 2007)

analogous to credit for prison sentences completed prior to resentencing on a revocation of probation. However, that analogy has been rejected by the appellate courts. *Van Thompson v. State*, 771 So.2d 593, 594 (Fla. 1<sup>st</sup> DCA 2000); *Tillman v. State*, 693 So.2d 626, 628 (Fla. 2<sup>nd</sup> DCA 1997).

The Third District Court, in *Gisi*, opines that awarding credit for each of several sentences served concurrently would “elevate to reality a legal fiction”. But the alternative - to deny the existence of sentences actually completed prior to a revocation of probation - would be no less a fiction. The Respondent urges this Court to prevent such fiction from becoming “reality”.

## ARGUMENT

A DEFENDANT, ON RESENTENCING, IS ENTITLED TO CREDIT ON EACH NEWLY IMPOSED CONSECUTIVE SENTENCE FOR PRISON TIME ALREADY SERVED ON THE ORIGINAL CONCURRENT SENTENCES. (Restated)

The Petitioner urges this Court to deny credit for time served to any defendant who has fully served prison sentences for multiple offenses underlying a violation of probation, if those sentences were originally served concurrently. In support of this argument, the Petitioner equates time served in jail awaiting disposition of multiple charges, to time served in prison for multiple convictions. (Petitioner's brief, pp. 6,7)

That analogy has been rejected by the appellate courts:

The state contends that the sentences imposed were proper because credit for time served need not be applied to each sentence when the sentences run consecutively after violation of probation. *The state recognizes no distinction between time spent in jail while awaiting sentencing and time served on a sentence of imprisonment, and argues that the same rules govern credit for such jail time and prison time, with any difference in the rules depending on whether the subsequent offenses are concurrent or consecutive.* [...] [...]

Contrary to the state's contention, credit for time served in prison on a sentence is treated differently from time served in jail awaiting sentencing. *As to the issue of Jones's entitlement to credit for time served in prison on the concurrent sentences, the cases cited by the state are not applicable to the circumstances in this case and we reject the state's argument.* As stated in *State v. Green*, [...] (*Fla.1989*): Upon resentencing after violation of the probation, Green was clearly entitled to credit for the time served on the original sentence. *State v. Holmes*, [...] (*Fla.1978*); see also *North Carolina v. Pearce*, [...] (*1969*). (Citations omitted, emphasis added.)

*Jones v. State* 633 So.2d 482, 483 (*Fla. 1<sup>st</sup> DCA 1994*)

This principle, announced in *Jones*, was affirmed by the First District Court in 2000;<sup>2</sup> and was adopted by the Second District Court, in *Tillman v. State*, 693 So.2d 626, 628 (Fla. 2<sup>nd</sup> DCA 1997).

The question presented to this Court by *Gisi*,<sup>3</sup> and in the instant case, is the credit to be awarded for time served in prison prior to a resentencing occasioned by on revocation of probation. Credit for jail time served while awaiting disposition is treated differently, as the aforesaid cases indicate, and thus, the cases offered to support the Petitioner's argument are not applicable here.

In contrast, the ruling of the District Court *sub judice* expresses the logic underlying all of the aforesaid cases; which is that the function of concurrent sentences is to “enable a defendant to serve two or more sentences at a single time.” *Rabedeau v. State*, 971 So.2d 913, 915 (Fla. 5<sup>th</sup> DCA 2007) The ruling urged by the Petitioner, if adopted by this Court, would “elevate to reality a legal

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<sup>2</sup> *Van Thompson v. State*, 771 So.2d 593, 594 (Fla. 1<sup>st</sup> DCA 2000)

<sup>3</sup> *Gisi v. State*, 948 So. 2d 816, (Fla. 2<sup>nd</sup> DCA), rev. granted, 952 So.2d 1189 (Fla. 2007)



fiction” more onerous than the one condemned by the Third District Court in *Gisi*.<sup>4</sup> That is, in the Petitioner’s view, a violation of probation retroactively transforms credit earned for fully completed “concurrent” sentences into a fiction, and imposes a harsh new “reality” - the reality that for all but one of those sentences, the years actually spent in prison will be treated by the courts as if they had never been served. That would not only be a fiction, but a cruel one indeed. The Respondent therefore asks this Court to answer, in the affirmative, the question certified by the Fifth District Court in the instant case.

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<sup>4</sup> *Gisi, supra, 948 So. 2d at pg. 819.*

## **CONCLUSION**

Based upon the foregoing arguments, and the authorities cited therein, the Respondent respectfully requests that this Court to answer the question certified by the Fifth District Court in the affirmative.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been delivered to the Honorable Bill McCollum, Attorney General, 444 Seabreeze Blvd., Fifth Floor, Daytona Beach, FL 32118, in c/o the Fifth District Court, and was mailed to: Mr. Robert Rabedeau, DC No. E14323, at Taylor Correctional Institution, 8501 Hampton Springs Road, Perry, FL 32348, on this 24th day of June, 2008.

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Noel A. Pelella  
Assistant Public Defender

**CERTIFICATE OF FONT**

I HEREBY CERTIFY that the size and style of type used in this brief is 14 point Times New Roman.

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Noel A. Pelella  
Assistant Public Defender

