IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. SC 09-2084

ROBERT RANSONE,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

RESPONDENT'S BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

Petitioner was the Defendant and Respondent was the prosecution in the Criminal Division of the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida. Petitioner was the Appellant and Respondent was the Appellee in the Fourth District Court of Appeal. In this brief, the parties shall be referred to as they appear before this Honorable Court except that Petitioner may also be referred to as the State.

In this brief, the symbol "A" will be used to denote the appendix attached hereto.

STATEMENT OF THE CASE AND FACTS

Respondent accepts Petitioners statement of the case and facts.

SUMMARY OF THE ARGUMENT

Petitioner argues that he was entitled to credit for time served because his sentences were concurrent, not consecutive. Petitioner's claim is meritless because pursuant to F.S. § 921.16(1), unless the Court stated otherwise, the sentences are deemed consecutive.

ARGUMENT

THE FOURTH DISTRICT COURT OF APPEAL CORRECTLY FOUND THAT THE PETITIONER IS NOT ENTITLED TO CREDIT FOR TIME SERVED IN MIAMI DADECOUNTY FOLLOWING HIS ARREST IN BROWARD COUNTY (RESTATED).

In Ransone v. State, 20 So.3d 445 (Fla. 4th DCA 2009), the Fourth District Court of appeal certified conflict with the decision of the Third District Court of Appeal in Tharpe v. State, 744 So. 2d 1256 (Fla. 3dDCA 1999. This Court has accepted jurisdiction. Petitioner argues that he was entitled to credit for time served because his sentences were concurrent, not consecutive. Petitioner's claim is meritless because pursuant to F.S. § 921.16(1), unless the Court stated otherwise, the sentences are deemed consecutive.

Section 921.16(1) of the Florida Statutes (1995) provides:

> A defendant convicted of two or more offenses charged in the same indictment, information, or affidavit or in consolidated indictments, informations, or affidavits shall serve the sentences of imprisonment concurrently unless the court directs that two or more of the sentences be served consecutively. **Sentences of imprisonment for offenses not charged in the same indictment, information, or affidavit shall be served consecutively unless the court directs that two or more of the sentences be served concurrently.**(Emphasis added).

Credit for the same jail time must be given on more than one sentence only when the sentences are concurrent. See Gethers v. State, 838 So.2d 504, 506 (Fla.2003) ("[W]hen, pursuant to section 921.161(1), a defendant receives pre-sentence jail-time credit on a

sentence that is to run concurrently with other sentences, those sentences must also reflect the credit for time served.") (quoting Daniels v. State, 491 So.2d 543, 545 (Fla.1986)); Daniels, 491 So.2d at 545 ("We distinguish this situation from one in which the defendant does not receive concurrent sentences on multiple charges; in such a case the defendant 'is not entitled to have his jail time credit pyramided by being given credit on each sentence for the full time he spends in jail awaiting disposition.' ") (quoting Martin v. State, 452 So.2d 938, 938-39 (Fla. 2d DCA 1984)); Dawson v. State, 816 So.2d 1123, 1123 (Fla. 1st DCA 2002) ("A defendant is deemed to be in custody on separate warrants from different counties, and therefore entitled to jail credit on both convictions unless the defendant receives consecutive sentences ....") (emphasis supplied).

In Ransone, 20 So. 3d at 446-447, the relevant facts are as follows:

> On August 3, 2004, Ransone was convicted of Grand Theft in Broward County circuit court case number 04-00920CF10A. He was placed on one year of community control followed by three years of probation. On October 20, 2004, a warrant alleging a violation of community control (VOCC) issued. On December 27, 2004, Ransone was arrested in Miami-Dade County on numerous unrelated charges. Ransone alleges that he was arrested on the Broward warrant the following day.
>
> Ransone remained incarcerated in a Miami-Dade jail and was found guilty of the Miami-Dade charges on March 27, 2006. He was sentenced to "time served" for those offenses. On April 5,

2006, he was transported to the Broward County Jail to face the charges in this case. On June 16, 2006, after a hearing, the court revoked community control and sentenced Ransone to five years in prison with credit for 84 days spent in jail before sentencing in this case. The trial court did not make this sentence concurrent with any other sentence. **At sentencing, despite Ransone's assertion that he had been arrested on the Broward warrant in December 2004, the trial court judge expressed a desire that Ransone not receive credit towards this offense for the time spent in jail on the unrelated Miami-Dade charges.**

Ransone then filed a postconviction motion through counsel which argued that he was in fact arrested on the Broward warrant in December 2004 while in the Miami-Dade County Jail, and that Ransone was entitled to credit from this date. Counsel attempted to obtain records from Miami-Dade county authorities to verify this allegation but was unsuccessful. The motion was denied based on a booking record and teletype information which indicated that the Miami-Dade authorities had merely placed a hold on Ransone. This court affirmed on appeal. Ransone v. State, 981 So.2d 1218 (Fla. 4th DCA 2008).

After this court had affirmed, Ransone attempted to supplement the record with an arrest affidavit which he had recently obtained from Miami-Dade police which supports his allegation that he was actually arrested on the VOCC warrant in December 2004. A member of Ransone's family was able to obtain the record. This court denied the motion to supplement the record without prejudice for Ransone to seek appropriate postconviction relief in the trial court. Ransone then filed the instant postconviction motion which was denied based on the State's response which contended that the claim was barred as successive and that the arrest affidavit did not actually show that the warrant was executed.

The Fourth District Court of Appeal found that the sentence Ransone received on the Broward County case was consecutive to the Miami-Dade Sentences and he was not entitled to any additional credit in the Broward case because the trial court did not state on the record that the sentences were to be served concurrently. Id. at 447. The Court correctly reasoned that:

> The Broward case was unrelated to the Miami-Dade charges and was charged in a separate information. When the trial court sentenced Ransone, it did not indicate that the sentence would be concurrent with any other sentences. The court did not have a reason to do so because the Miami-Dade sentences had been completed. Nevertheless, because this case was charged separately from the Miami-Dade cases, by operation of statute, the Broward sentence was consecutive to the Miami-Dade sentences. § 921.16(1), Fla. Stat. (2004) (providing: "Sentences of imprisonment for offenses not charged in the same indictment, information, or affidavit shall be served consecutively unless the court directs that two or more of the sentences be served concurrently"). See also State v. Matthews, 891 So.2d 479, 481 (Fla.2004) (explaining that, pursuant to section 921.16(1), because the trial court did not specify that a sentence was concurrent, a sentence for violation of probation was automatically structured to run consecutive to the sentence on an unrelated new offense committed while defendant was on probation). This conclusion is buttressed by common sense in that the Miami-Dade "time served" sentences were completed before the sentence was imposed in this unrelated case.

Id. at 448.

The court recognized the decision of Tharpe v. State, 744 So.

2d 1256 (Fla. 3d DCA 1999), but reasoned that the decision in Tharpe conflicts with § 921.16(1), Fla. Stat. (2004) and declined to follow the reasoning of the Third District Court of Appeal. Id.

Appellant argues that because Petitioner was given a sentence of time served on the Miami-Dade cases, and that sentence was completed before he was sentenced in Broward, there was no reason for the trial court to state on the record whether the sentence was to be served consecutive or concurrent. Appellant presumes that because the Appellant served time in Miami-Dade County and was arrested on the Broward Charges while serving this time the sentences must be deemed concurrent. However, this reasoning would allow the petitioner to improperly pyramid sentences and is contrary to the plain language of Section 921.16(1) of the Florida Statutes and this courts decision in Daniels v. State, 491 So.2d 543 (Fla. 1986).

In Daniels, 491 So. 2d at 545 this court reasoned that a defendant is entitled to credit for time served on **concurrent** sentences for unrelated cases however this Court stated:

> We distinguish this situation from one in which the defendant does not receive concurrent sentences on multiple charges; in such a case the defendant "is not entitled to have his jail time credit pyramided by being given credit on each sentence for the full time he spends in jail awaiting disposition." Martin v. State, 452 So.2d 938, 938-39 (quoting Miller v. State, 297 So.2d 36, 38 (Fla. 1st DCA 1974)).

As found by the Fourth District Court of Appeal, Petitioner is

not entitled to credit from the date of his arrest on the VOCC warrant in this case because the sentence he received was consecutive, not concurrent, with the Miami-Dade sentences. The time he spent in Miami-Dade was unrelated to the Broward case. The Miami-Dade jail time constituted the sentence, which Petitioner received for the multiple offenses he committed in Miami-Dade. If this credit is pyramided and credited towards the Broward case, then Petitioner would ultimately receive no punishment for the Miami-Dade offenses beyond the sanction he received for violating his community control in the Broward case. Moreover, it is clear that the trial judge in this case intended for the sentences to be consecutive[1], hence, pursuant to F.S. § 921.16(1), the Fourth District Court of Appeal properly found that petitioner was not entitled to additional credit for time served. Thus, this Court must affirm the decision of the Fourth District Court of Appeal and quash the decision of the Third District Court of Appeal in Tharpe because that case is contrary to the mandates of F.S. § 921.16(1).

1 The trial court judge expressed a desire that Ransone not receive credit towards this offense for the time spent in jail on the unrelated Miami-Dade charges. Ransone, 20 So. 3d at 446-447

CONCLUSION

WHEREFORE, based on the foregoing arguments and the authorities cited therein, Respondent respectfully requests this Court affirm the decision of the Fourth 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 "Petitioner's Brief on Jurisdiction" has been furnished to: Robert Ransone, DC # 184314, Dade Correctional Institution, 19000 SW 377th Street, Suite 300, Florida City, Florida 33304 this____ day of _____, 2010

_____
MELANIE DALE SURBER

CERTIFICATE OF TYPE SIZE AND STYLE

In accordance with Fla. R. App. P. 9.210, the undersigned hereby certifies that the instant brief has been prepared with 12 point Courier New Type.

_____
MELANIE DALE SURBER