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 JURISDICTION

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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

The only relevant facts to a determination of this Court's discretionary jurisdiction under Article V, Section 3(b)(3) of the Florida Constitution are those set forth in the opinion. A copy of the opinion is contained in the appendix to this brief.

SUMMARY OF THE ARGUMENT

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). Undersigned counsel acknowledges that the decisions are in conflict.

ARGUMENT

THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL EXPRESSLY AND DIRECTLY CONFLICTS WITH DECISION OF THE THIRD DISTRICT COURT OF APPEAL IN THARPE V. STATE, 744 SO. 2D 1256 (FLA. 3D DCA 1999).

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). Undersigned counsel acknowledges that the decisions are in conflict.

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 held 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. Id. at 447. The Court found as follows:

> 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.

In Tharpe v. State, 744 So. 2d 1256 (Fla. 3d DCA 1999), the relevant facts are as follows;

> Theron Tharpe appeals an order denying his motion for additional credit for time served. As the record does not conclusively refute his claim, we reverse and remand for further

proceedings.

> While on community control in Monroe County circuit court case numbers 97-00025-CF, 97-30031-CF and 97-30043-CF, defendant-appellant Tharpe was allowed to move to Miami-Dade County. While in Miami-Dade County, defendant was arrested for drug related offenses and incarcerated. Monroe County issued an arrest warrant for violation of community control.
>
> According to defendant's motion, he was served with the Monroe County arrest warrant while he was in the Miami-Dade County jail. Thereafter he entered a plea to time served on the Miami-Dade County offense, and was returned to Monroe County.
>
> In the three Monroe County cases defendant admitted the violations of community control and was sentenced to 30.5 months concurrent terms of incarceration. Defendant was granted 140 days credit for time served.
>
> Defendant filed the present motion seeking postconviction relief claiming that he was entitled to additional credit for jail time served. He contends that he was entitled to, and was not awarded, credit on the Monroe County cases for the time he served in the Miami-Dade County jail after his arrest on the Monroe County warrant. The trial court denied defendant's motion and defendant has appealed.

The Court held as follows:

> If defendant was arrested (as his postconviction motion asserts) on the Monroe County charges while detained in Miami-Dade County jail, he is entitled to credit on the Monroe County cases for time served subsequent to the date of the arrest. See Daniels v. State, 491 So.2d 543, 544 (Fla.1986); Pearson v. State, 538 So.2d 1349, 1350 (Fla. 1st DCA 1989). The order summarily denying postconviction relief is reversed, and the cause remanded for a determination whether the defendant was, in fact, arrested on the Monroe

> County warrant while in the Miami-Dade County jail.

It is clear that the decision in Ransone stands for the premise that even if a defendant was arrested on the Broward VOCC, while incarcerated on the unrelated Miami-Dade charges he is not entitled to credit for time served because pursuant to § 921.16(1), Fla. Stat. (2004) the sentences are consecutive. Whereas in Tharpe, the Court held that if the defendant can establish that he was arrested on the Monroe County VOCC while incarcerated in Miami-Dade on the unrelated charges, he is entitled to credit for time served as the sentences were concurrent. Hence, undersigned counsel acknowledges that the cases are in conflict and this Court should take jurisdiction pursuant to Fla. R. App. P. 9.030 (a)(2)(A)(vi).

CONCLUSION

WHEREFORE, based on the foregoing arguments and the authorities cited therein, Respondent respectfully requests this Court GRANT Petitioner's request for discretionary review over the instant cause.

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