

IN THE SUPREME COURT OF FLORIDA

CASE NO. 10-2198

**LAZARO FLORES,**

Petitioner,

-vs-

**THE STATE OF FLORIDA,**

Respondent.

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**INITIAL BRIEF OF PETITIONER ON THE MERITS**

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ON PETITION FOR DISCRETIONARY REVIEW  
FROM THE DISTRICT COURT OF APPEAL  
OF FLORIDA, THIRD DISTRICT

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**INTRODUCTION**

Petitioner, Santo Hernandez, was the appellant in the district court of appeal and the defendant in the Circuit Court. Respondent, State of Florida, was the appellee in the district court of appeal, and the prosecution in the Circuit Court. In this brief, the symbol "R" designates the record on appeal; the symbol "T" refers to the transcript of the trial proceedings.

## **STATEMENT OF THE CASE AND FACTS**

Lazaro Flores was originally charged by information with one count of armed robbery for an offense which was committed when Mr. Flores was nineteen (19) years old (R. 7-11). On June 20, 2007, Mr. Flores was sentenced under the youthful offender statute. He was sentenced to community control for two years followed by probation for a term of five years and he enlisted in the Miami-Dade County Corrections boot camp as a condition of his community control (R. 21-28). Several affidavits of violation were later filed by the Department of Corrections. On October 10, 2008, the Department filed an affidavit alleging a violation based on the defendant's arrest for possession of cocaine (R. 33). The cocaine case was eventually resolved by a plea to both the substantive charge and the violation of probation on February 17, 2009. As a result, the original probation was modified and Mr. Flores was placed on drug offender probation for five years with an end date of June 20, 2014 (R. 241-52).

The final affidavit, filed on March 17, 2009, alleged the following:

- (1) That the defendant was arrested on February 27, 2009 for selling marijuana within 1000 feet of a school.
- (2) That the defendant did not allow the probation officer to enter his

home on February 26, 2009.

- (3) That the defendant did not comply with the probation officer's instructions to be at his residence on February 26, 2009.
- (4) That the defendant had failed to pay restitution.
- (5). That the defendant had failed to complete his public service hours.

(R. 41-42).

At the violation hearing Detective Gordon Stiller, with the Hialeah Police Department, testified that on August 20, 2008 he was conducting surveillance for an undercover narcotics operation when he observed Mr. Flores in a white Cadillac in the area under investigation (R. 276-77). Other officers observed the defendant engage in a hand-to-hand transaction with an undercover police officer within 1000 feet of the William Layman Daycare Center (R. 277-78). The detective identified photographs of the money and the marijuana involved in the transaction (R. 281).

Officer Ariel Perez purchased \$40 worth of marijuana from Mr. Flores while working undercover on August 20, 2008 (R. 289-91). Officer Perez was assisted by a confidential informant who identified Mr. Flores as a seller when the defendant pulled up in a Cadillac (R. 291). The officer handed the defendant the money and the defendant gave the officer the contraband (R. 291). Based on his knowledge and experience, Perez identified the substance that he received from Mr. Flores as

marijuana (R. 293-94).

Officer Israel Perez, a gang unit officer, spoke with Mr. Flores when the defendant turned himself in at the station (R. 299-300). After Perez *Mirandized* the defendant, Mr. Flores said that he did not want to make a statement (R. 303-04).

Shortly thereafter, while conversing about other matters, Mr. Flores asked about a friend of his, "Cantone," who was allegedly involved in the same case (R. 304-06).

Mr. Flores wanted to know why his friend was in a holding cell at the station.

Perez told him that the friend had been arrested on a warrant (R. 306). The defendant said that Cantone had just given him a ride. The officer let Mr. Flores speak to his friend for a minute. When the defendant returned, he said "If I take the heat for all of this and I talk to you, and I tell you everything you want to know, will you let Gabriel free?" Perez said that he couldn't do that and that was the end of the discussion (R. 306).

At the close of the State's evidence, the trial court found that Mr. Flores violated the terms of his probation by selling marijuana to Officer Perez (R. 326). The defense attorney argued that because Mr. Flores had not been **convicted** (after either a guilty plea or a jury trial) for the sale of marijuana, his youthful offender status could not be revoked (R. 310-17).

The court revoked the defendant's youthful offender status and sentenced him

to life imprisonment (R. 327).

On appeal, the Third District Court of Appeal held that a defendant's youthful offender status is revocable when the State establishes a new law violation at a revocation hearing and thus affirmed the trial court's imposition of a life sentence.



## **SUMMARY OF THE ARGUMENT**

A defendant's youthful offender status may only be revoked when he commits a substantive violation, which has been interpreted as the commission of a new crime while under supervision. Before subjecting a young defendant to a lengthy prison sentence (such as life imprisonment), the new law violation should be established by a jury trial, or plea based on a reasonable doubt standard, as opposed to the far less rigorous standard of preponderance of the evidence. As such, the Third District's decision in this case should be overturned.

## ARGUMENT

### **A DEFENDANT'S YOUTHFUL OFFENDER STATUS, BASED ON A NEW LAW VIOLATION, MUST NOT BE REVOKED UNLESS THE DEFENDANT HAS NOT BEEN CONVICTED OF THE NEW OFFENSE.**

The Youthful Offender Act created a separate, alternative sentencing scheme to deal with young criminal offenders. Once an individual has been classified as a youthful offender, only sanctions pursuant to the act may be imposed. *See Mendez v. State*, 835 So. 2d 348 (Fla. 4th DCA 2003). A youthful offender retains his youthful offender status even when he violates the community control, or the probationary portion of his sentence, unless the violation is *substantive* in nature. *See State v. Meeks*, 789 So.2d 982 (Fla. 2001).

In *State v. Arnette*, 604 So. 2d 482 (Fla. 1992), the defendant was adjudicated guilty in 1979 and sentenced as a youthful offender for armed burglary and false imprisonment. While serving the community control phase of his sentence, he was convicted and sentenced for sexual battery. As a result, the trial court revoked his youthful offender status and resentenced him to life imprisonment on the armed burglary case. This Court held that the life sentence for the armed burglary was illegal. *Arnette*, 604 So. 2d at 483.

In 1990, the Florida legislature amended the Youthful Offender statute and

provided that a non-technical, *substantive* violation of a community control program would subject the defendant to a sentence beyond the six year cap. *See Johnson v. State*, 678 So. 2d 934 (Fla. 3d DCA 1996); *State v. Meeks*, 789 So.2d 982. A violation is *substantive* “when it involves the commission of a separate criminal offense.” *Meeks*, 789 So. 2d at 988.

An adjudication of guilt based on the new criminal act should be required before a defendant is divested of his youthful offender status. In *Rogers v. State*, 972 So. 2d 1017, 1019 (Fla. 4th DCA 2008), the Fourth District held that A defendant’s youthful offender status may only be revoked “when the defendant is charged and **convicted** with a new, substantive offense.” *See also, Boynton v. State*, 896 So. 2d 898, 899 (Fla. 3d DCA 2005).

In conformity with the intent of the Youthful Offender Act, a young defendant who has been classified as a youthful offender should not be exposed to life imprisonment for a non-capital offense which was committed when the individual was under the age of twenty-one. *See* §958.04(1)(b), FLA. STAT. (2011). As such, before a defendant’s youthful offender protection is removed, the new crime should be established beyond a reasonable doubt after either a jury trial, or a

guilty plea.<sup>1</sup>

Therefore, the Third District Court's decision affirming the revocation of Mr. Flores's youthful offender status, along with the imposition of a life sentence, must be overturned.

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<sup>1</sup>The standard for finding a new law violation in a probation revocation proceeding is preponderance of the evidence, which is significantly lower than the reasonable doubt standard. *See Reyes v. State*, 711 So. 2d 1378 (Fla. 2d DCA 1998).

## CONCLUSION

Based on the foregoing arguments and authorities cited, petitioner respectfully requests this Court to quash the decision of the Third District Court of Appeal and remand this case with instructions that the defendant's youthful offender status must not be revoked until and unless he is convicted of the new law violation.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed to the Office of the Attorney General, 444 Brickell Avenue, Suite 650, Miami, Florida 33131, on this 7th day of April, 2011.

BY: \_\_\_\_\_  
MANUEL ALVAREZ

**CERTIFICATION OF FONT**

Undersigned counsel certifies that the font used in this brief is 14 point proportionately spaced Times Roman.

BY: \_\_\_\_\_  
MANUEL ALVAREZ