

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC10-2198

LAZARO FLORES,

Petitioner,

-VS-

STATE OF FLORIDA,

Respondent.

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

BRIEF OF PETITIONER ON JURISDICTION

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INTRODUCTION

This is a petition for discretionary review of the decision of the Third District Court of Appeal in Flores v. State, ___ So. 2d ___, 35 Fla. L. Weekly D2209 (3d DCA Oct. 6, 2010), on the grounds of direct conflict of decisions. In this brief of petitioner on jurisdiction, all references are to the attached appendix, paginated separately and identified as "A" followed by the page number.

STATEMENT OF THE CASE AND FACTS

Lazaro Flores was originally charged by information with one count of armed robbery (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 he was 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.

*A notice invoking this Court's discretionary jurisdiction
based on conflict was timely filed.*

SUMMARY OF THE ARGUMENT

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 s/he is convicted of a new crime while under supervision. *In the instant case, the Third District held, contra Rogers, that a defendant's youthful offender status is revocable when the State establishes a new law violation at a revocation hearing. In light of the express conflict between the Third and Fourth Districts on the application of the youthful offender statute, this Court should exercise its discretionary jurisdiction to review the decision of the Third District Court of Appeal.*

ARGUMENT

**THE DECISION OF THE DISTRICT COURT OF APPEAL,
THIRD DISTRICT, IN THE PRESENT CASE DIRECTLY
CONFLICTS WITH THE DECISION OF THE FOURTH
DISTRICT IN *ROGERS v. STATE*, 972 So. 2d 1017 (Fla. 4th DCA
2008).**

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." (emphasis added). In reaching this conclusion, the Fourth District relied on *Boynton v. State*, 896 So. 2d 898, 899 (Fla. 3d DCA 2005), where the Third District held that "a defendant previously classified as a youthful offender who is subsequently charged with substantive offenses . . . is not entitled to be sentenced as a youthful offender **upon conviction of the new, substantive offense.**" (Emphasis added).

The Third District, in the case *sub judice*, expressly disagreed with the Fourth District's interpretation of *Boynton*. Slip op. at 5. Under the Third District's new analysis, a defendant may be stripped of his/her youthful offender status once the State proves, at a probation violation hearing, that the defendant committed a new offense, irrespective of whether the defendant was formally charged with the subsequent crime and whether s/he was convicted. Slip op. 5-6. Under this interpretation, a defendant who violates the probationary portion of a youthful

offender sentence is treated no differently than a normal probationer. Once a new law violation is established, the defendant's youthful offender status is revocable and s/he is subject to the maximum statutory sentence for the original offense.

The Third District's holding, therefore, is clearly irreconcilable with the Fourth District's holding in *Rogers, supra*. It is respectfully submitted that this Court should accept jurisdiction in this case to resolve the conflict generated by the Third District's decision in this case and to clarify the application of the youthful offender statute.

CONCLUSION

Based on the foregoing facts, authorities and arguments, petitioner respectfully requests this Court to exercise its discretionary jurisdiction to review the decision of the Third 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 was mailed to the Office of the Attorney General, 444 Brickell Avenue, Suite 950, Miami, Florida 33131, on this 11th day of November, 2010.

BY: _____
MANUEL ALVAREZ, ESQ.

CERTIFICATION OF FONT

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

BY: _____
MANUEL ALVAREZ, ESQ.