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IN THE SUPREME COURT OF FLORIDA

MICHAEL LEVANDOSKI,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Case No. SC17-962

(L.T. No. 4D15-4801)

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JURISDICTIONAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

PAGE#

TABLE OF CITATIONS

Statutes

PRELIMINARY STATEMENT

Respondent, the State of Florida, was the Appellee in the Fourth District Court of Appeal (DCA) and the prosecuting authority in the trial court, and will be referenced in this brief as Respondent, the prosecution, or the State. Petitioner, Michael Levandoski, was the Appellant in the DCA and the defendant in the trial court, and will be referenced in this brief as Petitioner or by proper name.

"PJB" will designate Petitioner's Jurisdictional Brief. That symbol is followed by the appropriate page number.

The symbol "A" will be used to denote the appendix attached hereto.

A bold typeface will be used to add emphasis. Italics appeared in original quotations, unless otherwise indicated.

JURISDICTIONAL STATEMENT

Appellant is seeking to have this Court exercise discretionary jurisdiction to review a decision of a District Court of Appeal that expressly and directly conflicts with the decisions of the Supreme Court or another District Court of Appeal on the same point of law pursuant to Article V, § 3(b)3 Fla. Const. (2015).

STATEMENT OF THE CASE AND FACTS

The decision of the district court can be found at *Levandoski v. State*, No. 4D15-4801, 2017 WL 1401463, at 2–3 (Fla. 4th DCA Apr. 19, 2017) (Appendix A). Petitioner appealed the trial court's order denying his post-conviction motion to correct his sentence imposing "sex offender probation" having plead guilty to lewd computer solicitation of a child and traveling to meet a minor for unlawful sexual activity. The Fourth District Court of Appeal held:

> "Sex offender probation" is a term of art describing certain conditions of probation that must be applied pursuant to statute in certain instances. *See* § 948.30, Fla. Stat. (2010). However, sex offender probation may also be imposed as a special condition of probation for an offense not enumerated in the statute. *Villanueva*, 200 So.3d at 53. When imposed as a special condition of probation, the court must state at sentencing that it is imposing sex offender probation. *Parkerson*, 163 So.3d at 692. In *Parkerson*, the sentencing "court did not orally pronounce that 'sex offender conditions apply' to the defendant's community control and probation terms." *Id.* In that situation, where "sex offender probation" was not orally pronounced, it cannot be imposed as the defendant was not on notice.
>
> In this case, Levandoski was on notice that the court sentenced him to "sex offender probation." Prior to entering his plea, Levandoski acknowledged a prior offer from the State that sought to impose sex offender probation. After sentencing, Levandoski filed two motions in the circuit court stating that he had been sentenced to sex offender probation. And, on direct appeal, his counsel filed an *Anders* brief in this Court acknowledging that he had been sentenced to one year of sex offender probation on count I and a consecutive 15 years of sex offender probation on count II. Unlike *Parkerson*, the court in this case orally imposed "sex offender probation" at sentencing.

> Due process is satisfied, and the defendant is put on notice, when the court states at sentencing that it is imposing sex offender probation. When a court clearly imposes sex offender probation as a special condition of probation, it need not individually specify each item contained within the umbrella of sex offender probation conditions. Unlike *Parkerson*, where the sentencing court did not orally sentence the defendant to sex offender probation, and *Sturges*, where the court wrongly imposed "mandatory" sex offender probation when it was not mandatory, the court here exercised its discretion and clearly imposed sex offender probation as a special condition of probation. We find no conflict between the oral pronouncement and the written sentence.
>
> III. Conclusion
>
> When appropriate, a court may impose sex offender probation as a special condition of probation without stating the various components that term encompasses. Therefore, the trial court's order is affirmed. We also certify conflict with the First District's opinion in *Snow I*, 157 So.3d 559 (Fla. 1st DCA 2015), *clarified on remand*, 193 So.3d 1091 (Fla. 1st DCA 2016).

SUMMARY OF ARGUMENT

While this Court does have jurisdiction to review a decision of a District Court of Appeal that expressly and directly conflicts with the decisions of the Supreme Court or another District Court of Appeal on the same point of law, the instant decision does not meet that standard and this Court lacks jurisdiction to hear this case.

The issue was affirmed below because Petitioner plead guilty to charges of lewd computer solicitation of a child and traveling to meet a minor for unlawful activity and the trial court orally stated "I'm going to sentence him to 48 months in the Department of Corrections on count I, followed by one year

of sexual offender probation, and count II… I'm imposing one year on count one and followed by 15-year sex offender probation on count two for a total of 16 [years]." The opinion also noted that "As the court stated when reviewing the sentencing transcript at the hearing on the instant motion, 'it was the intent of all the parties, even defense counsel..., that sex offender probation would be imposed.'" *Levandoski v. State*, No. 4D15-4801, 2017 WL 1401463, at *1 (Fla. 4th DCA Apr. 19, 2017). The Fourth District Court Of Appeal held "When appropriate, a court may impose sex offender probation as a special condition of probation without stating the various components that term encompasses." The opinion does not expressly and directly conflict with the decisions of this Court or another District Court of Appeal.

Since Petitioner intended that sex offender probation be imposed, Petitioner cannot now complain that he was placed on sex offender probation. The opinion below is therefore distinguishable from *Snow v. State* (*Snow I*), 157 So.3d 559, 561 (Fla. 1st DCA 2015), *clarified on remand*, 193 So.3d 1091 (Fla. 1st DCA 2016) and *Lawson v. State*, 969 So. 2d 222, 230-235 (Fla. 2007).

ARGUMENT

PETITIONER HAS FAILED TO ESTABLISH THE COURT HAS DISCRETIONARY JURISDICTION TO REVIEW THE DECISION OF THE DISTRICT COURT (Restated)

Petitioner contends this Court has jurisdiction under Article V, § 3(b)3 of the Florida Constitution, because the Fourth District's decision conflicts with a decision of this Court and decisions from other District Court of Appeals.

Article V, §3(b)(3) provides: "The supreme court … [m]ay review any decision of a district court of appeal that … expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law."

The issue was affirmed in the opinion below because in 2010, Petitioner plead guilty to charges of lewd computer solicitation of a child and traveling to meet a minor for unlawful activity and the trial court orally pronounced "I'm going to sentence him to 48 months in the Department of Corrections on count I, followed by one year of sexual offender probation, and count II… I'm imposing one year on count one and followed by 15-year sex offender probation on count two for a total of 16 [years]." Shortly thereafter, the court acknowledged sex offender probation was "available, but ... not mandatory," and that the probation "will be subject to the conditions of sex offender probation." *Levandoski v. State*, No. 4D15-4801, 2017 WL 1401463, at *1 (Fla. 4th DCA April 19, 2017).

The opinion below noted **"As the [trial] court stated when reviewing the sentencing transcript at the hearing on the**

instant motion, 'it was the intent of all the parties, even defense counsel... that sex offender probation would be imposed' and that 'it was the intent of the court and of the parties that he be imposed sex offender probation.'" *Levandoski v. State*, No. 4D15-4801, 2017 WL 1401463, at *1 (Fla. 4th DCA April 19, 2017) (emphasis added).

In *Snow v. State* (*Snow I*), 157 So.3d 559, 561 (Fla. 1st DCA 2015), *clarified on remand*, 193 So.3d 1091 (Fla. 1st DCA 2016), the court held:

> Based on *Villanueva* [*v. State,* 200 So.3d 47 (Fla. 2016)], we conclude the trial court could selectively impose special conditions of sex offender probation, which were reasonably related to appellant's conviction for traveling to meet a minor to engage in unlawful acts that were sexual in nature. However, the law requires that each special condition of probation be pronounced orally at sentencing before it can be included in the written probation order. *Lawson v. State,* 969 So.2d 222, 227 n. 3 (Fla.2007); *State v. Hart,* 668 So.2d 589, 592 (Fla.1996); *Newton v. State,* 31 So.3d 892, 894 (Fla. 4th DCA 2010). The trial court's written order contains all of the conditions of sex offender probation listed in the statute, but not all of these conditions were orally pronounced at sentencing.

Snow v. State, 157 So. 3d 559, 561 (Fla. 1st DCA 2015), *review granted, decision quashed,* No. SC15-536, 2016 WL 1696462 (Fla. Apr. 28, 2016), *clarified on remand*, 193 So.3d 1091 (Fla. 1st DCA 2016). *Snow* does not state 'it was the intent of all the parties, even defense counsel... that sex offender probation would be imposed'. *Snow* is therefore distinguishable from the case below, although the Fourth District certified conflict.

In *Lawson v. State*, 969 So.2d 222 (Fla. 2007), this Court stated:

> Probation orders need not include every possible restriction so long as a reasonable person is put on notice of what conduct will subject him or her to revocation. We agree with the Fifth District that a condition of probation should "provide reasonable individuals of common intelligence the basis to know and understand its meaning." *Lawson,* 941 So.2d at 489; *accord Britt v. State,* 775 So.2d 415, 417 (Fla. 1st DCA 2001) (stating that two probation conditions were "sufficiently precise to 'give [ ] a person of ordinary intelligence fair notice of what constitutes forbidden conduct.' ") (quoting *Brown v. State,* 629 So.2d 841, 842 (Fla.1994)). Although the conditions should be clearly set out and must mean what they say, every detail need not be spelled out and the language should be interpreted in its common, ordinary usage.

Lawson v. State, 969 So. 2d 222, 230-235 (Fla. 2007).

This Court further stated in footnote 3:

> This Court has distinguished between special conditions and general conditions on the issue of how much due process is owed to a probationer. *See, e.g., State v. Williams,* 712 So.2d 762 (Fla.1998). General conditions, which are contained within the Florida Statutes, must be included within the order but need not be orally pronounced at the sentencing hearing. *See State v. Hart,* 668 So.2d 589, 592 (Fla.1996). Special conditions, which are those not specifically authorized by statute, must be orally pronounced at sentencing before they can be placed in the probation order. *See id.* The reason for the distinction relates to due process, such that a probationer is imputed with notice as to those conditions that are based upon statute but not as to those conditions that were uniquely drafted for purposes of his or her probation. Thus, in order to satisfy due process and provide a probationer with adequate notice, the trial court must orally pronounce any special condition at sentencing. *See id.*

Lawson v. State, 969 So. 2d 222, n.3 (Fla. 2007).

Since "sex offender probation" is defined in Fla. Stat. §948.001 (13) and the conditions of sex offender probation are

contained within Fla. Stat. §948.30, there is no reason for a trial court to further pronounce the individual conditions of sex offender probation. Petitioner was put on notice of what conduct would subject him to revocation. The opinion below noted that

> "Sex offender probation" is a term of art describing certain conditions of probation that must be applied pursuant to statute in certain instances. *See* § 948.30, Fla. Stat. (2010). However, sex offender probation may also be imposed as a special condition of probation for an offense not enumerated in the statute. *Villanueva*, 200 So.3d at 53. When imposed as a special condition of probation, the court must state at sentencing that it is imposing sex offender probation.

Levandoski v. State, No. 4D15-4801, 2017 WL 1401463, at *3 (Fla. 4th DCA Apr. 19, 2017). The Fourth District Court Of Appeal held "When appropriate, a court may impose sex offender probation as a special condition of probation without stating the various components that term encompasses." Placing a defendant on "sex offender probation" is sufficient to put a reasonable person on notice of what conduct will subject him or her to revocation. Placing a defendant on "sex offender probation" provides reasonable individuals of common intelligence the basis to know and understand its meaning. This is especially true in the instant case where "**it was the intent of all the parties, even defense counsel... that sex offender probation would be imposed**". *Levandoski v. State*, No. 4D15-

4801, 2017 WL 1401463, at *1 (Fla. 4th DCA Apr. 19, 2017) (emphasis added).

The opinion does not expressly and directly conflict with the decisions of this Court or another District Court of Appeal.

In *Ansin v. Thurston*, 101 So.2d 808, 810 (Fla. 1958), this Court explained:

> "It was never intended that the district courts of appeals should be intermediate courts. The revision and modernization of the Florida judicial system at the appellate level was prompted by the great volume of cases reaching the Supreme Court and the consequent delay in the administration of justice. The new article embodies throughout its terms the idea of a Supreme Court which functions as a supervisory body in the judicial system for the State, exercising appellate power in certain specified areas essential to the settlement of issues of public importance and preservation of uniformity of principle and practice, with review by the district courts in most instances being final and absolute.
>
> To fail to recognize that these are courts primarily of final appellate jurisdiction and to allow such courts to become intermediate courts of appeal would result in a condition far more detrimental to the general welfare and the speedy and efficient administration of justice than that which the system was designed to remedy."

Accordingly, this Court should decline to exercise its discretionary jurisdiction in this case.

CONCLUSION

WHEREFORE, based on the foregoing arguments and the authorities cited therein, Respondent respectfully requests this Court decline to exercise discretionary jurisdiction.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing "Respondent's Brief on Jurisdiction" has been furnished to **Joshua LeRoy, Esq., 224 Datura Street, Suite 1416, West Palm Beach, FL 33401, via e-mail at** jleroy@leroylawpa.com **and** eservice@leroylawpa.com this 23rd day of June, 2017.

CERTIFICATE OF COMPLIANCE

I certify that this brief was computer generated using Courier New 12-point font.

Respectfully submitted,

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