

IN THE SUPREME COURT OF FLORIDA

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VINCENT LORENZO ALLEN

Petitioner,

vs.

STATE OF FLORIDA

Respondent.

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CASE NO. 71,495

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APPEAL FROM THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT OF FLORIDA

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PETITIONER'S INITIAL BRIEF

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PRELIMINARY STATEMENT

Petitioner, VINCENT LORENZO ALLEN, was the appellant, and the respondent, STATE OF FLORIDA, was the appellee in the appeal heard before the District Court of Appeal, First District, of the State of Florida.

In the brief, the parties will be referred to as "petitioner" and "respondent". Petitioner's exhibits are appropriately noted and are hereby incorporated by reference within the brief.

STATEMENT OF THE CASE AND OF THE FACTS

Petitioner pled guilty to Grand Theft in Case Number 79-4821 (Petitioner's Exhibit 1) and to Bail Bond Jumping in Case Number 79-6525 (Petitioner's Exhibit 2), both of which are third degree felonies, in the Circuit Court of the Fourth Judicial Circuit, in and for Duval County, Florida.

As a result of his pleas, Petitioner was adjudged a youthful offender in both cases and sentenced to serve four years of incarceration and two years of community control in each case, said sentences to be served consecutively, on December 4, 1979.

Petitioner filed a Motion to Vacate Judgment and Sentence (Petitioner's Exhibit 3) on October 2, 1986, on three grounds:

A. Petitioner's two sentences under the Youthful Offender Act (YOA) exceeded the statutory maximum to which an adult offender could be sentenced for the same crime.

B. Petitioner's two consecutive sentences under the Youthful Offender Act exceeded the six year maximum sentence the court may impose on one adjudged a youthful offender.

C. Petitioner's guilty plea was not voluntarily made because he did not understand the meaning of the word "consecutive".

Petitioner's motion was summarily denied by the Honorable L. P. Haddock on November 18, 1987, without an evidentiary hearing. (Petitioner's Exhibit 4)

Petitioner filed a Notice of Appeal to the District Court of Appeal, First District of Florida, on December 12, 1986 (Petitioner's Exhibit 5)

The district court reversed the trial court's decision as to ground (A), supra, but affirmed the lower court's decision as to grounds (B) and (C), supra, in an Opinion filed September 17, 1987. Allen v. State, 12 F.L.W. 2255, (Fla. 1st DCA September 17, 1987). (Petitioner's Exhibit 6)

Petitioner filed a Motion for Rehearing and/or Rehearing En Banc in the district court on September 23, 1987.

Petitioner's Motion for Rehearing was denied in an Opinion filed November 10, 1987; however, the district court certified the conflict between the district courts of appeal on the issue of:

WHETHER A YOUTH SENTENCED UNDER THE YOUTHFUL OFFENDER ACT MAY BE SENTENCED CONSECUTIVELY SO THAT HIS TOTAL COMMITMENT EXCEEDS THE SIX YEAR YOUTHFUL OFFENDER MAXIMUM PRESCRIBED IN §958.04(2)(d) FLORIDA STATUTES.

Allen v. State, 12 F.L.W. 2565, (Fla. 1st DCA November 10, 1987). (Petitioner's Exhibit 7)

Petitioner filed a Notice to Invoke Discretionary Jurisdiction with the district court on November 20, 1987, on the basis of Article V, §3 of the Florida Constitution and Florida Rules of Appellate Procedure 9.030(a)(2)(A)(vi), which covers express conflicts among the district courts of appeal. (Petitioner Exhibit 8)

### SUMMARY OF THE ARGUMENT

In applying penalties under the Youthful Offender Act, Florida district courts of appeal are in conflict, leading to the disparate treatment of similarly situated persons. In one jurisdiction consecutive sentences in excess of the six year maximum are imposed; in two others, such sentences are not allowed.

This Court indicated in State v. Goodson, 403 So.2d 1337 (Fla. 1981) that contemporaneously imposed consecutive sentences for multiple felonies under the YOA are not allowed.

Consecutive sentences were not expressly addressed by the applicable statute, Section 958, Florida Statutes (Supp. 1978), but a careful reading of that statute and a review of its legislative history proves that the Florida Legislature intended that the exclusive sanction imposed on one adjudged a youthful offender to be a maximum of six years in Department of Corrections custody and that consecutive maximum sentences are not allowed.

Case analysis of pertinent decisions, in the jurisdictions upon whose youthful offender acts Florida's is based, indicates that once a defendant is adjudged a youthful offender for multiple felonies, the total sentence may not exceed the express maximum found in those acts.

## ARGUMENT

### **WHETHER A YOUTH SENTENCED UNDER THE YOUTHFUL OFFENDER ACT MAY BE SENTENCED CONSECUTIVELY SO THAT HIS TOTAL COMMITMENT EXCEEDS THE SIX YEAR YOUTHFUL OFFENDER MAXIMUM PRESCRIBED IN §958.04(2)(d) FLORIDA STATUTES.**

As a result of the conflict between the Florida District Courts of Appeal in their application of the Youthful Offender Act (YOA), Section 958 of the Florida Statutes, similarly situated persons are given disparate treatment under the law in violation of their right to equal protection under Article I, §2 of the Florida Constitution and the Fourteenth Amendment to the Constitution of the United States.

The ultimate question here is what sentence may be legally imposed on a person, who is classified by the court as a youthful offender, for multiple contemporaneous felony convictions.

In pertinent part, Section 958.05, the judicial disposition clause of Section 958, Florida Statutes (Supp. 1978) directed [the law in effect when the Petitioner was sentenced], that:

If the court classifies a person a youthful offender, in lieu of other criminal penalties authorized by law, the court shall dispose of the criminal case as follows:

(1) The court may place the youthful offender on probation in a community control program, with or without an adjudication of guilt, for a period not to exceed 2 years or extend beyond the 23rd birthday of the defendant.

(2) The court may commit the youthful offender to the custody of the department for a period not to exceed 6 years. The sentence of the court shall specify a period of not more than the first 4 years to be served by imprisonment and a period of not more than 2 years to be served in a community control program. The defendant shall serve the

sentence of the court unless sooner released as provided by law. [Emphasis added.]

This is a criminal statute and must be strictly construed in favor of the person against whom the penalty is to be imposed. Ferguson v. State, 377 So.2d 709 (Fla. 1979).

The Florida First District Court of Appeal expressly holds that consecutive sentences exceeding six years may be properly imposed on persons classified by the trial court as youthful offenders for multiple contemporaneous felony convictions. Harmon v. State, 397 So.2d 1218 (Fla. 1st DCA 1981); Allen v. State, 12 F.L.W. 2255 (Fla. 1st DCA, November 10, 1987).

The Florida Fifth and Second District Courts of Appeal expressly hold that consecutive sentences in excess of six years may not be imposed, even for multiple contemporaneous felony convictions, if the trial court classifies the defendant as a youthful offender for all charges. Lane v. State, 470 So.2d 795 (Fla. 5th DCA 1981); Dean v. State, 476 So.2d 318 (Fla. 2nd DCA 1985).

In State v. Goodson, 403 So.2d 1337 (Fla. 1981), Mr. Justice Boyd, writing for this Court, compared the effect of the habitual felony offender law, Section 775.084(1)(a), Florida Statutes (1977), and the YOA, when the defendant is simultaneously convicted of multiple felonies, and explained that:

In such a case the habitual offender statute allows the trial judge to impose separate sentences for each of the crimes committed and in his discretion to have those sentences run consecutively. Conversely, the Youthful Offender Act mandates that a trial judge not

commit a youthful offender to the custody of the Department of Corrections for more than 6 years. §958.05(2), Fla. Stat. (Supp. 1978). Thus a person convicted of more than one felony would go unpunished for the other felonies if he received the maximum penalty for the first felony. [Citations omitted.]

We also note that the existence of two or more contemporaneous felony convictions does not preclude a defendant from being classified as a youthful offender, it merely excludes him from mandatory classification as such...

Id., at 1339-40.

Goodson is controlling in the case sub judice.

As expressed in Section 958.021, Florida Statutes (Supp. 1978), entitled "Legislative Intent":

The purpose of this act is to improve the chances of correction and successful return to the community of youthful offenders sentenced to imprisonment by preventing their association with older and more experienced criminals during the terms of their confinement. It is the further intent of the Legislature to provide an additional sentencing alternative to be used in the discretion of the court when dealing with offenders who have demonstrated that they can no longer be handled safely as juveniles and who require more substantial limitations upon their liberty to ensure the protection of society. [Emphasis added.]

This Court has held "it is a fundamental rule of statutory construction that legislative intent is the polestar by which the court must be guided..."

State v. Webb, 398 So.2d 820, 824 (Fla. 1981).

The Legislature clearly intended that the YOA be a mid-point in sentencing; a balance between the less punitive juvenile

sentences and harsher adult sanctions. Senate Committees on Corrections, Probation and Parole, Health and Rehabilitative Services and Others, Florida Youthful Offender Act, A Report Submitted to the House Committee on Corrections, Probation and Parole, on Senate Bill 165 of May 10, 1978. (Petitioner's Exhibit 7)

Although not expressly prohibited by the YOA, it is evident that the Florida Legislature did not intend sentences under the YOA to be given consecutively. The Florida Youthful Offender Act was patterned after the Federal Youth Corrections Act, and similar statutes of Alabama and North Carolina. Senate Corrections, Probation and Parole Committee, Final Senate Staff Analysis and Economic Statement, on Senate Bill 165 of April 25, 1978. (Petitioner's Exhibit 8)

The question of consecutive sentences under the Federal Youth Corrections Act, 18 U.S.C.S. §5005 (Law. Co-op. 1967), has been addressed by the United States Court of Appeals, Ninth Circuit in U.S. v. Ortiz, 513 F.2d 198 (9th Cir. 1975). In that case the defendant was convicted on two counts. At sentencing, the trial court first sentenced Ortiz under the provisions of the federal act and then treated Ortiz as an adult on the record count, giving him a sentence consecutive to the first. The court of appeals held that:

When the District Judge sentenced Ortiz under the provisions of the Youth Corrections Act, he undeniably found, by implication, that Ortiz would derive benefit from the rehabilitative treatment contemplated and provided by that Act. Having so found, it was

inconsistent for the judge to treat Ortiz as an adult for the purpose of sentencing on the substantive conviction and to impose the additional five year consecutive sentence.

Id. at 199.

Upon review, it is obvious that the youthful offender statute in Alabama is even more similar to Florida's than is the Federal Youth Corrections Act or that of North Carolina. Ala. Code §15-19-6 (1975) (Petitioner's Exhibit 11), and N.C. Gen. Stat. §148.49.14 (1977) (Petitioner's Exhibit 12).

In construing the intent of the Alabama Legislature in Jackson v. State, 415 So.2d 1169 (Ala. 1982), a case determining whether consecutive probationary sentences were authorized under the Alabama Youthful Offender Act, the Supreme Court of Alabama found:

By the enactment of the Youthful Offender Act, the legislature not only sought to provide an alternative method of sentencing minors, but, in fact, created a procedure separate and apart from the criminal procedure dealing with adults accused of the same offense.

\* \* \*

Code of 1975, §15-19-6(a)(2) establishes the maximum probationary sentence or period allowable for a youthful offender, i.e., three years. That limitation on a sentence of probation is obviously one of the intended advantages of the Act. By comparison, the maximum probationary period for "adult" defendants found guilty of a felony is five years.

\* \* \*

Hence, consecutive sentences of probation would thwart the intention of the legislature. Although the Youthful Offender Act does not prohibit the imposition of

separate or multiple sentences of probation, clearly each probationary sentence must run from the time of the sentencing rather than from the end of the preceding probationary period.

If the defendant had been convicted simultaneously of two separate felonies and placed under sentences of probation, the probationary time could not have exceeded three years. The sentences would have had to be served concurrently rather than consecutively.

The imposition of consecutive sentences in excess of six years on juvenile offenders leads to an unreasonable result: youthful offenders being sentenced to adult terms of punishment in contravention of legislative intent. In effect, this renders the statute purposeless.

### CONCLUSION

In this case the trial court erred in imposing two maximum consecutive sentences on the Petitioner after classifying him as a youthful offender. The First District Court of Appeal erred in upholding the trial court's decision and has misconstrued the YOA as well as this Court's holding in Goodson, supra. This case should be reversed and remanded for resentencing of the Petitioner to a term not to exceed six years in total.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petitioner's Initial Brief has been furnished by U.S. Mail to ROYALL P. TERRY, JR., Assistant Attorney General, Department of Legal Affairs, THE CAPITOL - Suite 1502, Tallahassee, Florida 32399-1050, on this 22<sup>ND</sup> day of December, 1987.

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