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TABLE OF CITATIONS

CASES CITED:

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SUMMARY OF ARGUMENT

The respondent agrees with the state that the twenty-year probation term must be construed as a part of the suspended portion of the sentence only and not as an additional period beyond the forty years. The district court decision which would require the respondent to serve thirty-two years of probation essentially negates the clear intent of the trial court to require only twenty years of probation after the eight-year prison term.

The district court decision should be vacated and, if necessary, the trial court should be ordered to clarify the sentence to provide for only twenty years of probation following the eight-year prison sentence.

ARGUMENT

THE OPINION OF THE DISTRICT COURT IN
CARR V. STATE, 528 So.2d 406 (FLA.
5TH DCA 1988), ERRED IN CONSTRUING
THE ORIGINAL SENTENCE (OF EIGHT YEARS
IMPRISONMENT AND TWENTY YEARS
IMPRISONMENT) TO REQUIRE THIRTY-TWO
YEARS OF PROBATION.

The respondent essentially agrees with the argument made by the petitioner. The trial court's oral pronouncement when read in its entirety and the written sentence clearly provide for eight years imprisonment to be followed by twenty years of probation (the probation period was to be served during the thirty-two year suspended portion of the sentence). (R 7-9, 81)

The respondent submits that the trial court's order is clear and therefore disagrees with the relief requested by the state "to vacate the entire sentence and remand to the trial court for resentencing" (Petitioner's Brief on the Merits, p. 12) The respondent would request that the district court's opinion, which actually increases the respondent's probationary term to thirty-two years, be vacated. If necessary, the case should be remanded for a corrected, clarified written order to be entered (rather than for a whole new resentencing).

CONCLUSION

BASED UPON the cases, authorities, and policies cited herein, the respondent requests that this Honorable Court vacate the decision of the District Court of Appeal, Fifth District, and, if necessary, remand the case to the trial court for a corrected or clarified written sentence to be entered.

Respectfully submitted,

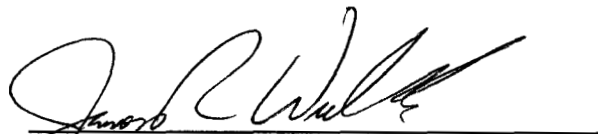
JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been delivered by mail to: The Honorable Robert A. Butterworth, Attorney General, 125 N. Ridgewood Avenue, Daytona Beach, Florida 32014; and the respondent, Mr. Mark Carr, Inmate Number A 322598, P.O. Box 747, Starke, FL 32091, this 21st day of December, 1988.



JAMES R. WULCHAK
CHIEF, APPELLATE DIVISION
ASSISTANT PUBLIC DEFENDER