

Woo A

IN THE SUPREME COURT OF FLORIDA

FILED

MAR 28 1990 ✓

CLERK SUPREME COURT
CLERK

STATE OF FLORIDA? :
Petitioner, :
vs. :
JAMES KERKLIN, :
Respondent. :
----- :

Case No. 74,811

DISCRETIONARY REVIEW OF DECISION OF THE
DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

ANSWER BRIEF OF RESPONDENT ON THE MERITS

JAMES MARION MOORMAN
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT
FLORIDA BAR NO. 0143265

ANDREA NORGARD
ASSISTANT PUBLIC DEFENDER

Public Defender's Office ✓
Polk County Courthouse
P. O. Box 9000 -- Drawer PD
Bartow, FL 33830
(813) 534-4200

ATTORNEYS FOR RESPONDENT

TOPICAL INDEX TO BRIEF

	<u>PAGE NO.</u>
PRELIMINARY STATEMENT	1
STATEMENT OF THE CASE AND FACTS	2
SUMMARY OF THE ARGUMENT	3
ARGUMENT	4
ISSUE I	
THE TRIAL COURT ERRED IN SENTENCING RESPONDENT TO A TERM OF IMPRISON- MENT IN EXCESS OF THE SIX YEARS AUTHORIZED BY SECTION 958.14, FLO- RIDA STATUTES, (1985) UPON A REVO- CATION OF PROBATION.	4
CONCLUSION	6
CERTIFICATE OF SERVICE	6

TABLE OF CITATIONS

CASES

PAGE NO.

<u>Kerklin v. State,</u> 548 So.2d 689 (Fla. 2d DCA 1989)	1
<u>State v. Watts,</u> — F.L.W. — (case number 74,117)	3-5

OTHER AUTHORITIES

§ 958.14, Fla. Stat. (1985)	3, 4, 6
-----------------------------	---------

PRELIMINARY STATEMENT

Respondent, James Kerklin, was the Defendant and Appellant in the matter of Kerklin v. State, 548 So.2d 689 (Fla. 2d DCA 1989).

Petitioner, the State of Florida, was the prosecuting authority and Appellee. Following the issuance of the opinion of the Second District on July 5, 1989, rehearing denied, September 13, 1989, the Petitioner sought review to this Court which accepted jurisdiction on February 13, 1990.

STATEMENT OF THE CASE AND FACTS

Respondent, James Kerklin, would accept the statement of the case and facts set forth in Petitioner's brief with no additions or corrections.

SUMMARY OF THE ARGUMENT

The 1985 amendment to the Youthful Offender Act limits the discretion of the trial court in resentencing a defendant upon a violation of community control or probation to a maximum sentence of six years under 958.14. This Court's opinion in State v. Watts, ___ F.L.W. ___ (case number 74,117) (Fla. March 15, 1990) governs the instant case.

ARGUMENT

ISSUE I

THE TRIAL COURT ERRED IN SENTENCING RESPONDENT TO A TERM OF IMPRISONMENT IN EXCESS OF THE SIX YEARS AUTHORIZED BY SECTION 958.14, FLORIDA STATUTES, (1985) UPON A REVOCATION OF PROBATION.

Following an admission by Respondent James Kerklin, that he had violation his probation imposed as part of a probationary split sentence under Section 958.14, Florida Statutes (1985), the Youthful Offender Act, the trial court imposed a sentence of seven years incarceration. Respondent sought review of his sentence and is before this court as a result of the Petitioner seeking this Court's discretionary review.

The identical issue of the maximum sentence which may be imposed upon a revocation of probation or community control imposed under Section 958.14, Florida Statutes, (1985) was presented to this Court in State v. Watts, — FL.W. — (case number 74,117) (Fla. March 15, 1990). This Court upheld the Second District's decision in Watts and stated conclusively the maximum sentence which may be imposed at a revocation under the Youthful Offender Act is six years incarceration.

This Court went on to hold that the 1985 amendment would apply to those defendants who violated their community control or probation after 1985 even if the date of the original offense preceded the 1985 amendment. Mr. Kerklin was alleged to be in violation of probation July 23, 1987 and admitted to said viola-

tion on December 22, 1987. Thus, Mr. Kerklin was well within the parameter of this Court's opinion in Watts, supra.

The decision *of* the district court should be affirmed and Mr. Kerklin is entitled to be resentenced to a period of no more than six years incarceration with credit for all time previously served .

APPENDIX

ITEMS:

PAGE NO.

1. Decision of the Supreme Court
of Florida in State v. Watts,
 F.L.W. -- (case number 74,117)
(Fla. March 15, 1990)

A1 - A15