IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,	)	
Petitioner,	)	
vs.	)	CASE NO. 63,145
STAN JEROME RIVERS,	)	
Respondent.	)	

RESPONDENT'S BRIEF OF THE MERITS

RICHARD L. JORANDBY
Public Defender
15th Judicial Circuit of Florida
224 Datura Street - 13th Floor
West Palm Beach, Florida 33401
(305) 837-2150

ALLEN J. DeWEESE
Assistant Public Defender

Counsel for Respondent

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AUTHORITIES CITED

PRELIMINARY STATEMENT

Respondent was the Defendant in the Criminal Division of the Circuit Court of the Seventeenth Judicial Circuit, in and for Broward County, Florida and the Appellant in the District Court of Appeal, Fourth District. Petitioner was the Prosecution and Appellee in the lower courts. In the brief the parties will be referred to as they appear before this Honorable Court.

STATEMENT OF THE CASE AND FACTS

Respondent accepts the State's statement of the case and facts with the following additions:

On January 12, 1983, the Fourth District Court of Appeal issued its mandate ordering a new trial for Respondent (copy of Mandate in Appendix to this brief).

After the remand, on February 21, 1983, Respondent entered a guilty plea to the charge. He was adjudicated guilty and sentenced to one year and one day incarceration (copies of Judgment and Sentence in Appendix).

Undersigned counsel hereby represents to this Court that he was informed by the Department of Corrections that Respondent finished his sentence and was released from custody on May 3, 1984.

Respondent's original sentence was three and one-half years (R 443).

ARGUMENT

THIS COURT SHOULD NOT REVERSE THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL IN THE INSTANT CASE (RESTATED).

Respondent has no choice but to admit that the legal issue in the instant case is disposed of by this Court's decision in State v. Page, ___So.2d___ (Fla. 1984), 9 F.L.W. S.C.O. 148, which was handed down after the decision of the Fourth District Court of Appeal in the instant case.

However, there are several reasons why this Court should refrain from reversing the decision of the Fourth District Court of Appeal in the instant case.

First, a new judgment and sentence have already been entered by the trial court pursuant to the remand by the Fourth District Court of Appeal. Before this Court ever accepted this case for review, the Fourth District Court of Appeal issued its mandate granting Respondent a new trial (copy of Mandate in Appendix to this brief). Then, on February 21, 1983, Respondent entered a plea of guilty to the charge, was adjudicated guilty, and was sentenced to one year and one day imprisonment (copies of Judgment and Sentence in Appendix).

The constitutional ban on double jeopardy now prevents this Court from overturning the new judgment and sentence. Article I, Section 9, Florida Constitution; Fifth and Fourteenth Amendments, United States Constitution. Jeopardy "attaches" upon acceptance of a guilty plea such as that here. Brown v. State, 367 So.2d 616, 620-621 (Fla. 1979); Troup v. Rowe, 283

So.2d 857 (Fla. 1973). A guilty plea is itself a conviction, and takes the place of a trial. See, Boykin v. Alabama, 395 U.S. 238 (1969); North Carolina v. Alford, 400 U.S. 25 (1970).

Once jeopardy has attached, reprosecution is barred unless the trial or guilty plea is cut short either for "manifest necessity" or to meet the "ends of public justice." Brown v. State, supra at 621. Here, Respondent's guilty plea proceeded to completion and was followed by judgment and sentence. Obviously, there was no mistrial based on "manifest necessity". Likewise, the "ends of public justice" do not require or permit vacation of a guilty plea where, as here, all the conditions of the plea are apparently met. Cf, Brown v. State, supra (allowing vacation of a guilty plea where the defendant did not comply with his promise to assist in the prosecution of a co-defendant).

In short, this Court should refrain from deciding this case because it cannot overturn the judgment and sentence already entered upon remand. A decision by this Court could have no practical effect. Moreover, any decision by this Court intended to reinstate Respondent's original three and one-half year sentence, even if it could be effective, would be a manifest injustice because Respondent has already completed the sentence of one year and one day imposed on remand and has been released.

The second reason that this Court should not decide this case is that such a decision would add nothing as a precedent to the jurisprudence of this State. State v. Page, supra, already serves as this Court's ruling on the point of law involved here. It is quite obvious that the statement of the law in the Fourth

District Court of Appeal's published opinion in the instant case has been overruled by Page. This will be reflected in legal publications, and will be recognized by the courts and the legal profession. There is no need for a second opinion from this Court stating the same principle of law already set forth in Page.

The final reason that this Court should decline to decide this case is that doing so would create a dangerous precedent regarding this Court's discretionary jurisdiction. Respondent has extensively argued the jurisdictional issues in his answer brief on jurisdiction filed with this Court and will not repeat the full discussion here. Respondent would merely point out that jurisdiction was not conferred in this case by a certified question, that there is no express and direct conflict stated in the District Court of Appeal's opinion, and that the decision does not affect a "class of constitutional officers" in the manner required to confer jurisdiction on this Court. In view of the fact that any decision by this Court would have neither any precedential value of its own nor any practical effect on Respondent's case, the only significant effect of a decision by this Court would be a dangerous erosion of the explicit constitutional limits on the number and kinds of cases which this Court may review.

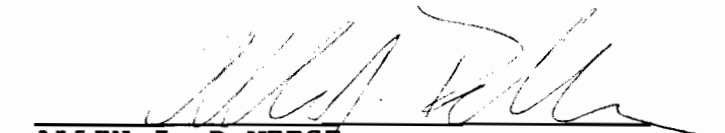
For these reasons, Respondent requests this Court to discharge review.

CONCLUSION

Based upon the foregoing Argument and the authorities cited therein, Respondent respectfully requests this Honorable Court to discharge review of this case.

Respectfully Submitted,

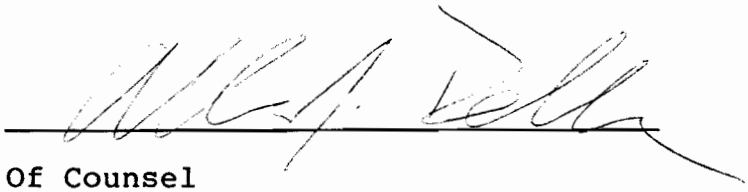
RICHARD L. JORANDBY
Public Defender
15th Judicial Circuit of Florida
224 Datura Street/13th Floor
West Palm Beach, Florida 33401
(305) 837-2150



ALLEN J. DeWEESE
Assistant Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to PENNY H. BRILL, Assistant Attorney General, 111 Georgia Avenue, West Palm Beach, Florida, by courier, this 15th day of JUNE, 1984.



Of Counsel