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PRELIMINARY STATEMENT

The Petitioner was the Appellee in the District Court of Appeal, Fourth District, and the prosecution in the trial court. The Respondent was the Appellant in the Fourth District and the defendant in the trial court. In this brief, the parties will be referred to as the Petitioner and the Respondent. The symbol "R" will be used to designate the record on appeal which includes the transcript of the trial proceedings. All emphasis is supplied unless the contrary is indicated.

STATEMENT OF THE CASE AND FACTS

The Petitioner readopts its Statement of the Case and Facts as presented in its initial brief and would add the following. The Petitioner also acknowledges, as it has now been brought to the undersigned counsel's attention for the first time,¹ that Respondent pursuant to the mandate issued by the Fourth District, has been readjudicated guilty and sentenced for the charge involved in the instant case. Petitioner would only point out that despite the fact that Respondent was re-sentenced on February 21, 1983, counsel for Respondent never brought this information to this Court's attention, either in their Response in Opposition to State's Motion to Consolidate, filed on April 5, 1983, or in any other pleading.

FOOTNOTE 1

1 Undersigned counsel was not counsel for the State who initially filed the Petition for Discretionary Review in the instant case.

POINT INVOLVED ON REVIEW

WHETHER THE TRIAL COURT WAS CORRECT IN ALLOWING
PETIT LARCENY CONVICTIONS TO BE USED FOR IM-
PEACHMENT OF THE RESPONDENT?

ARGUMENT

POINT ON REVIEW

THE TRIAL COURT WAS CORRECT IN ALLOWING PETIT
LARCENY CONVICTIONS TO BE USED FOR IMPEACHMENT
OF THE RESPONDENT.

Petitioner submits that despite the fact that Respondent has since been readjudicated and sentenced for the charges involved in the instant case, this Court still has jurisdiction to determine the issue. This Petitioner submitted in its brief on jurisdiction that this Court had jurisdiction as the Fourth District's decision expressly affected a class of constitutional or state officers, as well as conflicted with decisions of this Court and other district courts in the manner in which it construed the statutes involved. This Court accepted jurisdiction on May 21, 1984. Petitioner asserts that these considerations are still present in the instant case. This Court should quash the decision of the Fourth District in light of this Court's recent decision in State v. Page, ___ So. 2d ___, Case No. 63,360, Fla., opinion filed April 26, 1984 [9 FLW 178]. It should be noted that although this Court in Page noted an n.l, that the Fourth District in the instant case agreed with Hall v. Oakley, 409 So. 2d 93 (Fla. 1st DCA), review denied, 419 So. 2d 1200 (Fla. 1982), this Court did not expressly disapprove or overrule the instant case.

This petition has been pending in this Court since January 26, 1983. Respondent never informed this Court of his

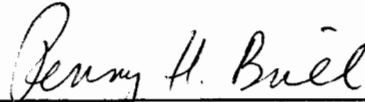
readjudication and resentence which occurred on February 21, 1983. Although, Respondent's original conviction and sentence cannot now be reinstated, Petitioner submits that this Court still has jurisdiction to quash the Fourth District opinion in the instant case, thereby expressly disapproving it.

CONCLUSION

Based upon the foregoing reasons and citations of authority, the Petitioner submits that this Court should reverse and quash the decision of the Fourth District.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Reply Brief Of Petitioner On The Merits has been furnished to ALLEN J. DeWEESE, ESQUIRE, Assistant Public Defender, Attorney For Respondent, 224 Datura Street, 13th Floor, West Palm Beach, Florida 33401 by mail/courier this 22nd day of June, 1984.


OF COUNSEL