

IN THE SUPREME COURT OF FLORIDA

VICTOR K. GOLDSTEIN,
Petitioner,

v.

Case No. 64,168

STATE OF FLORIDA,
Respondent.

RESPONDENT'S BRIEF ON JURISDICTION

JIM SMITH
ATTORNEY GENERAL

ROBERT J. LANDRY
Assistant Attorney General
1313 Tampa Street, Suite 804
Park Trammell Building
Tampa, Florida 33602
(813) 272-2670

COUNSEL FOR RESPONDENT

FILED

SEP 22 1983

SID J. WHITE
CLERK OF THE COURT
Clerk of the Court

/jaf

TABLE OF CONTENTS

	<u>Page</u>
STATEMENT OF THE CASE AND FACTS	1
ARGUMENT	
WHETHER THIS COURT SHOULD EXERCISE ITS DISCRETION TO REVIEW THE DECISION OF THE SECOND DISTRICT COURT OF APPEAL.	
CONCLUSION	2
CERTIFICATE OF SERVICE	2

TABLE OF CITATIONS

	<u>Page</u>
State v. Cruz, 426 So.2d 1308 (Fla. 2d DCA 1983), review granted, Case No. 63,451	1
State v. Holliday, 431 So.2d 309 (Fla. 1st DCA 1983), review granted, Case No. 63,832	1

STATEMENT OF THE CASE AND FACTS

Respondent accepts the Statement of the Case and Facts as related by Petitioner.

ARGUMENT

WHETHER THIS COURT SHOULD
EXERCISE ITS DISCRETION TO
REVIEW THE DECISION OF THE
SECOND DISTRICT COURT OF
APPEAL.

Respondent would suggest that is is unnecessary for this court to exercise its discretion to review Goldstein's Petition for Discretionary Review for the following reasons: First of all, Petitioner did not allege in his (c)(4) Motion to dismiss that he did not have the predisposition to commit the offense. Since his motion, therefore, was incomplete, the trial court did not err in denying the requested relief.


Secondly, Petitioner in the instant case received a sentence on December 1, 1982 of six months in the county jail. See Respondent's attached Exhibit A. Obviously, more than six months has now elapsed and we respectfully submit that the case is moot. This court's decision not to entertain the instant petition will not create instability in the law as this court has already agreed to review the decisions of State v. Cruz, 426 So.2d 1308 (Fla. 2d DCA 1983), review granted, Case No. 63,451; and State v. Holliday, 431 So.2d 309 (Fla. 1st DCA 1983, review granted, Case No. 63,832. In any event, the Petitioner's willingness to stipulate that the State could prove a prima facie case at the time of his entry of a nolo contendere

plea should now preclude him from making a successful challenge to his conviction.

WHEREFORE the instant court should decline to exercise its discretion to review the Second District Court of Appeal's decision.

Respectfully submitted,

JIM SMITH
ATTORNEY GENERAL

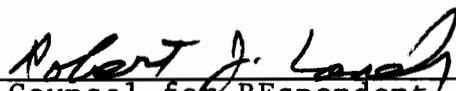


ROBERT J. LANDRY
Assistant Attorney General
1313 Tampa Street, Suite 804
Park Trammell Building
Tampa, Florida 33602
(813) 272-2670

COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent by U.S. Regular Mail to: Robert F. Moeller, Assistant Public Defender, Courthouse Annex, 2nd Floor, Tampa, Florida 33602-3197 this 20TH day of September, 1983.



Of Counsel for Respondent