

IN THE SUPREME COURT OF FLORIDA

CASE NO. 64,640

FELIPE RUIZ,

Petitioner,

vs.

THE STATE OF FLORIDA,

Respondent.

ON PETITION FOR DISCRETIONARY REVIEW

BRIEF OF RESPONDENT ON JURISDICTION

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TABLE OF CONTENTS

	<u>PAGES</u>
TABLE OF CITATIONS.....	ii
INTRODUCTION.....	1
STATEMENT OF THE CASE.....	1
STATEMENT OF THE FACTS.....	1-2
QUESTION PRESENTED.....	3
ARGUMENT.....	4-5
CONCLUSION.....	6
CERTIFICATE OF SERVICE.....	6

TABLE OF CITATIONS

<u>CASE</u>	<u>PAGES</u>
Bradford v. State, 435 So.2d 962 (Fla. 1st DCA 1983).....	2, 4
Donaldson v. State, 407 So.2d 623 (Fla. 5th DCA 1981).....	2, 4
Maselli v. State, 425 So.2d 176 (Fla. 2d DCA 1983).....	2, 4, 5

INTRODUCTION

Petitioner, Felipe Ruiz, was the appellant in the District Court of Appeal and the defendant in the trial court. Respondent, the State of Florida, was the appellee in the District Court of Appeal and the prosecution in the trial court. The parties will be referred to as they appear before this court. The symbol "A" will be used to refer to the Petitioner's Appendix. All emphasis has been supplied unless the contrary is indicated.

STATEMENT OF THE CASE

Respondent accepts Petitioner's Statement of the Case as being a substantially true and correct account of the proceedings below with such additions and exceptions as are noted in the argument portion of this brief.

STATEMENT OF THE FACTS

Respondent rejects Petitioner's Statement of the Facts to the extent that Petitioner has gone beyond the face of the opinion in his recitation. The District Court of Appeal of Florida, Third District affirmed the revocation of Petitioner's probation upon the State's showing of a subsequent unrelated conviction entered pursuant to a nolo contendere

plea. The revocation of probation was affirmed relying upon the reasoning contained in Bradford v. State, 435 So.2d 962 (Fla. 1st DCA 1983) and Maselli v. State, 425 So.2d 176 (Fla. 2d DCA 1983), recognizing that these opinions are in conflict with Donaldson v. State, 407 So.2d 623 (Fla. 5th DCA 1981) (Cobb, J. dissenting). (A. 1).

QUESTION PRESENTED

WHETHER THIS COURT SHOULD DECLINE TO
EXERCISE DISCRETIONARY JURISDICTION
OVER THE INSTANT CASE?

ARGUMENT

THIS COURT SHOULD DECLINE TO EXERCISE
DISCRETIONARY JURISDICTION OVER THIS
CASE. (Restated).

The Third District Court of Appeal affirmed the revocation of Petitioner's probation in the cause sub judice when the State showed that there was a subsequent unrelated conviction entered pursuant to a nolo contendere plea. The district court reached this decision in reliance upon the reasoning of the First District Court of Appeal in Bradford v. State, 435 So.2d 962 (Fla. 1st DCA 1983) and of the Second District Court of Appeal in Maselli v. State, 425 So.2d 176 (Fla. 2d DCA 1983). (A. 1). The Third District went on to recognizing that those opinions conflicted with Donaldson v. State, 407 So.2d 623 (Fla. 5th DCA 1981) (Cobb, J., dissenting).

Respondent acknowledges that the face of the Third District's opinion in this case does provide a basis upon which this Court may exercise its discretionary jurisdiction pursuant to Fla.R.App.P. 9.030(a)(2)(A)(iv). This Court is nonetheless urged to decline to exercise this jurisdiction in light of the fact that the instant case follows existing case law and that this Court has already been presented with this issue in Maselli v. State, S.Ct.

Case No. 63,183. Respondent further submits that the instant case is appropriate for summary affirmance should review be granted.

CONCLUSION

Based upon the foregoing argument and citations of authority, the Respondent would respectfully urge that the Petitioner's petition for discretionary review be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing BRIEF OF RESPONDENT ON JURISDICTION was furnished by mail to BETH C. WEITZNER, Assistant Public Defender, 1351 N.W. 12th Street, Miami, Florida, 33125, on this 6th day of January, 1984.

Calianne P. Lantz

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