

IN THE SUPREME COURT OF FLORIDA

BENNIE LEE WALKER,
Petitioner,

vs.

CASE NO. ⁶⁴~~67~~,747

STATE OF FLORIDA,
Respondent.

FILED
SID J. WHITE

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CLERK, SUPREME COURT

By
Chief Deputy Clerk

RESPONDENT'S BRIEF ON JURISDICTION

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_____ /

RESPONDENT'S BRIEF ON JURISDICTION

PRELIMINARY STATEMENT

Bennie Lee Walker was the appellant below and will be referred to as "Petitioner." The State of Florida was the appellee below and will be referred to as "Respondent." Reference to the appendix attached hereto shall be designated by the symbol "A" followed by the appropriate page number(s) in parenthesis.

STATEMENT OF THE CASE AND FACTS

The pertinent facts are contained in the district court's original opinion and as clarified when Petitioner's motion for rehearing or rehearing en banc was denied. Walker v. State, ___ So.2d ___ (Fla. 1st DCA 1983) [8 F.L.W. 2476, 2896].

It should be noted, as was done by the district court, that Petitioner never questioned that facts and circumstances existed which justified the sentence he received.

ISSUE I

WHILE THE INSTANT OPINION CONFLICTS WITH BROWN V. STATE, 435 So.2d 940 (Fla. 3d DCA 1983), THIS COURT SHOULD NOT ACCEPT JURISDICTION SINCE THE INSTANT OPINION IS CONSISTENT WITH OPINIONS OF THIS COURT AND THEREFORE REQUIRES NO REVIEW.

Respondent acknowledges that the Third District Court of Appeal now takes a view contrary to the instant opinion and opinions emanating from the Fifth District Court of Appeal. Brown v. State, 435 So.2d 940 (Fla. 3d DCA 1983), but see Jones v. State, 384 So.2d 956 (Fla. 5th DCA 1980); Smith v. State, 378 So.2d 313 (Fla. 5th DCA 1980). Respondent made the same acknowledgement in its response to Petitioner's motion for rehearing or rehearing en banc filed in the court below. (A 3).

Nevertheless, this Court's own opinions support the decision reached by the court below and acceptance of jurisdiction would simply result in affirmance. Steinhorst v. State, 412 So.2d 332 (Fla. 1982); Clark v. State, 363 So.2d 331 (Fla. 1978); State v. Smith, 240 So.2d 807 (Fla. 1970). See also: Gibson v. State, 194 So.2d 19 (Fla. 2d DCA 1967); (A 2).

Therefore, this Court should decline to exert its discretionary jurisdiction and review the instant opinion pursuant to Article V, Section 3(b)(3), Florida Constitution (1983).

Respectfully submitted:

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been forwarded to GLENNA JOYCE REEVES, Assistant Public Defender, Post Office Box 671, Tallahassee, Florida 32302, this 8th day of February, 1984.

Andrew Thomas
ANDREW THOMAS

OF COUNSEL.