

IN THE SUPREME COURT OF FLORIDA

LORENZO TEAGUE :
 :
 Petitioner, :
 :
 V. :
 :
 STATE OF FLORIDA, :
 :
 Respondent. :
 :
 _____ :

Case No. 65,315

FILED

SID J. WHITE

JUN 11 1984

CLERK, SUPREME COURT

By
Chief Deputy Clerk

BRIEF OF RESPONDENT
ON JURISDICTION

JIM SMITH
ATTORNEY GENERAL

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

COUNSEL FOR RESPONDENT

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PRELIMINARY STATEMENT

Petitioner seeks to invoke the jurisdiction of this Court pursuant to Article V, Section III (b) (3) of the Florida Constitution and Florida Rule of Appellate Procedure 9.030 (a) (2) (A) (IV).

In this brief, the parties will be referred to by their proper names or as they stand before this Court.

STATEMENT OF THE CASE AND FACTS

Respondent, the State of Florida, accepts the statement of the case and facts as submitted by Petitioner in his brief on Jurisdiction.

ARGUMENT

WHETHER THE DECISION OF THE SECOND
DISTRICT COURT OF APPEAL IN LORENZO
TEAGUE V. STATE OF FLORIDA, Case No.
82-1398, EXPRESSLY AND DIRECTLY
CONFLICTS WITH STATE V. CASPER,
417 So.2d 263 (Fla. 1st DCA 1982),
ON THE SAME QUESTION OF LAW.

Respondent agrees with Petitioner that the facts of the instant case and State v. Casper, 417 So.2d 263 (Fla. 1st DCA 1982), are nearly identical, and thus, the cases would appear to be in conflict. However, in arriving at its decision, the Second District specifically determined the instant cause to be "almost a carbon copy of State v. Cruz, 426 So.2d 1308 (Fla. 2d DCA 1983) and Goldstein v. State, 435 So.2d 352 (Fla. 2d DCA 1983)." Cruz, decided subsequent to State v. Casper, holds that where the defendant's intent or state of mind is at issue, predisposition is a question of fact and should not be decided on a Motion to Dismiss under R.3.190 (c)(4), Florida Rules of Criminal Procedure. This argument was not advanced in Casper until the state's Motion for Rehearing, and then dismissed on procedural grounds as untimely. See State v. Casper, 417 So.2d at 264. Because Casper did not reach the merits of the Cruz argument, the two decisions were not decided on the same point of law and no conflict exists. Petitioner has failed to demonstrate "inconsistency or conflict among the precedents." Nielsen v. Sarasota, 117 So.2d 731 (Fla. 1960); Kyle v. Kyle, 139 So.2d 885 (Fla. 1962); Kincaid v. World Ins. Co., 157 So.2d 517 (Fla. 1963).

Additionally, inasmuch as Cruz is presently pending before this Honorable Court and, in fact, Oral Argument was held in Cruz in November, 1983, this Honorable Court should decline to exercise its discretionary jurisdiction with respect to the instant cause. The decision in Cruz should be dispositive of the instant cause.

Respectfully submitted,

JIM SMITH
ATTORNEY GENERAL



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

Counsel for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to: Robert F. Moeller, Assistant Public Defender, Hall of Justice Building, 455 North Broadway Avenue, Bartow, Florida 33830, this 7th day of June, 1984.


COUNSEL FOR RESPONDENT