

**FILED**

SID J. WHITE

JUL 5 1984

CLERK, SUPREME COURT

By [Signature]  
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

vs.

CARL LEE HICKS,

Respondent.

CASE NO. 65,495

4DCA 83-684

PETITIONER'S BRIEF ON JURISDICTION

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PRELIMINARY STATEMENT

The Petitioner was the Appellee in the Fourth District Court of Appeal and the prosecution in the trial court. The Respondent was the Appellant and the defendant, respectively, in those lower courts.

In the brief, the parties will be referred to as they appear before this Honorable Court.

They symbol "A" will be used to refer to Petitioner's Appendix, which is a conformed copy of the appellate court's opinion.

All emphasis has been added by Petitioner unless otherwise indicated.

STATEMENT OF THE CASE AND OF THE FACTS

On appeal, the Fourth District Court of Appeal reversed Respondent's order of revocation and remanded for a new revocation proceeding because Respondent was not advised of his right to counsel at the probation revocation proceeding (A). In its written opinion, the fourth district acknowledged that the first district court has apparently adopted a different rule than the one applied by the court in resolving the case sub judice (A).

POINT INVOLVED ON APPEAL

WHETHER THERE IS EXPRESS AND DIRECT  
CONFLICT BETWEEN THE DECISIONS OF  
OTHER STATE APPELLATE COURTS AND  
THE DECISION OF THE FOURTH DISTRICT  
COURT OF APPEAL ISSUED IN THE  
INSTANT CASE?

ARGUMENT

PETITIONER PROPERLY INVOKES  
THE DISCRETIONARY JURISDICTION  
OF THIS HONORABLE COURT, AS THERE  
IS EXPRESS AND DIRECT CONFLICT  
BETWEEN THE DECISIONS OF OTHER  
STATE APPELLATE COURTS AND THE  
DECISION OF THE FOURTH DISTRICT  
COURT OF APPEAL ISSUED IN THE  
INSTANT CASE.

Petitioner seeks to establish this Court's "conflict" jurisdiction under Art. V. §3(b)(3), Fla. Const. (1980) and Rule 9.030(a)(2)(A)(iv), Fla. R. App. P. Conflict exists between the instant decision and the decision in Sanderson v. State, \_\_\_ So.2d \_\_\_ (Fla. 1st DCA, issued March 13, 1984) [9 F.L.W. 575].

Conflict jurisdiction is properly invoked when a district court of appeal either (1) announces a rule of law which conflicts with a rule previously announced by the supreme court of another district, or (2) applies a rule of law to produce a different result in a case which involves substantially the same facts as another case. Mancini v. State, 312 So.2d 732, 733 (Fla. 1975). The court below created conflict in the former way by announcing a rule of law contrary to that announced in Sanderson, supra.

Petitioner submits that conflict exists between this decision and the decision sub judice because in the instant case the fourth district court held that before a

trial court can take a plea from a probationer in a proceeding involving a probation violation the probationer must be advised of his right to counsel (A) while in Sanderson, supra, the first district court held that a probationer is not entitled to appointed counsel at probation revocation proceedings. 9 F.L.W. at 577. The decision by the first district court in Sanderson, supra, follows the rule established by the United States Supreme Court in Gagnon v. Scarpelli, 411 U.S. 778, 93 S.Ct. 1756, 36 L.Ed.2d 656 (1973). Petitioner submits that the Fourth District Court of Appeal itself recognized this conflict in its opinion (A).

Since there is express and direct conflict between the holding in the instant case and the holding in Sanderson v. State, supra, and since this issue involves an important point of law, the instant issue is and will continue to be a recurring legal problem. This has been pointed out by Judge Hugh Glickstein of the Fourth District Court of Appeal in his concurring opinion in Moore v. State, \_\_\_ So.2d \_\_\_ (Fla. 4th DCA, issued June 13, 1984) [9 F.L.W. 1304], which was reversed on the authority of the instant case.

This Honorable Court needs to resolve the issue so that appellate and trial courts will have a well-defined and workable rule of law to guide them. Petitioner therefore respectfully requests this Honorable Court accept jurisdiction in this cause.



CONCLUSION

WHEREFORE, based on the foregoing reasons and authorities cited therein, Petitioner respectfully requests this Honorable Court accept discretionary jurisdiction in the instant cause.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Petitioner's Brief on Jurisdiction was furnished to Margaret Good, Assistant Public Defender, 224 Datura Street, 13th Floor, West Palm Beach, Florida this 2nd day of July, 1984.

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