

IN THE SUPREME COURT OF FLORIDA

BOBBY BROWN,

Petitioner,

vs.

STATE OF FLORIDA,


Respondent.

CASE NO. 66,032

RESPONDENT'S BRIEF ON JURISDICTION

FILED
SID J. WHITE
NOV 7 1984.

CLERK, SUPREME COURT

By  Chief Deputy Clerk

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POINT ARGUMENT

THE INSTANT DECISION OF
THE DISTRICT COURT, BROWN
V. STATE, So.2d , CASE
NO. 84-346 (FLA. 5th DCA
OCTOBER 11, 1984) [9 FLW
2163], EXPRESSLY AND DI-
RECTLY CONFLICTS WITH STATE
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Section 817.563 Fla. Stat. (1983) provides that it is unlawful for any person to agree, consent or in any manner offer to unlawfully sell to any person a controlled substance, named or described in § 893.03, and then to sell to such person any other substance in lieu of such controlled substance. Three district courts have found this statute to be constitutional. See State v. Thomas, 428 So.2d 327 (Fla. 1st DCA), cert. denied, 436 So.2d 101 (Fla. 1983); M.P. v. State, 430 So.2d 523 (Fla. 2d DCA 1983); State v. Bright, 451 So.2d 880 (Fla. 5th DCA 1984). One has found to the contrary. See State v. Bussey, 444 So.2d 63 (Fla. 4th DCA 1984). State v. Bussey is presently before this Court on direct appeal and has been assigned Case No. 64,966. The respondents in Bright have sought certiorari and, on the basis of certified conflict with Bussey, such decision is also before this Court and has been assigned Case No. 65,689.

In the instant decision, the Fifth District relied upon its prior decision of State v. Bright in affirming the conviction and sentence at issue; the court stated that its decision directly conflicted with Bussey. In light of the obvious conflict between Bright and Bussey, it is appropriate


that this Court accept jurisdiction of the instant proceeding. In light of the fact, however, that such cases have already been fully briefed, and in one instance argued, Respondent files concurrently herewith a motion for the instant case to travel together with Bright, in that, in all likelihood, this Court's disposition of Bussey and Bright will resolve any issue raised by Petitioner sub judice.

CONCLUSION

WHEREFORE, for the aforementioned reasons, Respondent has no objection to this Court's acceptance of jurisdiction of the instant proceeding.

Respectfully submitted,

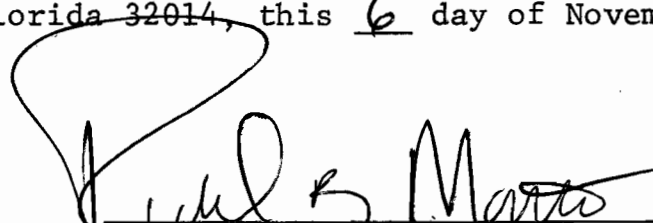
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been furnished by delivery to Brynn Newton, Assistant Public Defender, 1012 S. Ridgewood Avenue, Daytona Beach, Florida 32014, this 6 day of November, 1984.


Richard B. Martell
Of Counsel