

065

IN THE SUPREME COURT OF FLORIDA

CASE NO. 66,352

**FILED**

SID L. WHITE

JAN 18 1985

CLERK, SUPREME COURT

By [Signature]  
Chief Deputy Clerk

THE STATE OF FLORIDA,

Petitioner,

-vs-

LIVINGSTON MILBRY,

Respondent.

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ON APPLICATION FOR DISCRETIONARY REVIEW

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RESPONDENT'S BRIEF ON JURISDICTION

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THE STATE OF FLORIDA,

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-vs-

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INTRODUCTION

The respondent, Livingston Milbry, was the appellant in the Third District Court of Appeal and the defendant in the trial court. The petitioner, the State of Florida, was the appellee in the District Court and the prosecution in the trial court. In this brief, the parties will be referred to as they stand before this Court. The symbol "A" will be used to refer to portions of the petitioner's appendix. All emphasis is supplied unless the contrary is indicated.

STATEMENT OF THE CASE

The respondent accepts the petitioner's Statement of the Case as an accurate account of the proceedings conducted below.

STATEMENT OF THE FACTS

The respondent accepts the petitioner's Statement of the Facts as an accurate account of the proceedings conducted below.

QUESTION PRESENTED

WHETHER THE DECISION OF THE DISTRICT COURT OF APPEAL IN THE PRESENT CASE IS IN EXPRESS AND DIRECT CONFLICT WITH THE DECISION OF THE FIRST DISTRICT COURT OF APPEAL IN DUNLAP V. STATE, 433 So.2d 631 (Fla. 1st DCA 1983)?

## ARGUMENT

THE DECISION OF THE DISTRICT COURT OF APPEAL IN THE PRESENT CASE IS IN EXPRESS AND DIRECT CONFLICT WITH THE DECISION OF THE FIRST DISTRICT COURT OF APPEAL IN DUNLAP V. STATE, 433 So.2d 631 (Fla. 1st DCA 1983).

In the present case, the Third District Court of Appeal concluded that the respondent's youthful offender sentence of four years imprisonment plus two years community control exceeded the statutory maximum sentence for second degree grand theft. (A. 1, 2). In doing so, the Third District ruled in accordance with the rehabilitative purposes of the Youthful Offender Act and with years of established precedent. (A. 1, 2). See, State v. Holmes, 360 So.2d 380 (Fla. 1978); Saunders v. State, 405 So.2d 1037 (Fla. 3d DCA 1981); Gonzalez v. State, 392 So.2d 334 (Fla. 3d DCA 1981); Skinner v. State, 366 So.2d 486 (Fla. 3d DCA 1979); Watts v. State, 328 So.2d 223 (Fla. 2d DCA 1976). The Third District recognized, however, that its decision was in conflict with the decision of the First District in Dunlap v. State, 433 So.2d 631 (Fla. 1st DCA 1983). (A. 2). The respondent does not contest that finding.

CONCLUSION

Based on the cases and authorities cited herein, the respondent respectfully requests this honorable Court decline to accept jurisdiction in this cause.

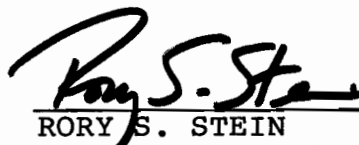
Respectfully submitted,

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BY:   
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RORY S. STEIN  
Assistant Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered by mail to the Office of the Attorney General, Suite 820, 401 N.W. 2nd Avenue, Miami, Florida 33128, this 16<sup>th</sup> day of January, 1985.



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RORY S. STEIN  
Assistant Public Defender