

IN THE SUPREME COURT OF FLORIDA

LARRY DONNELL BROWN,

Petitioner,

vs.

CASE NO. 66,390

STATE OF FLORIDA,

Respondent.

FILED
FEB 22 1965
CLERK, SUPREME COURT
By *[Signature]*
Chief Deputy Clerk

RESPONDENT'S BRIEF ON JURISDICTION

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_____ /

PRELIMINARY STATEMENT

Larry Donnell Brown, the criminal defendant and appellant in Brown v. State, 9 F.L.W. 2602 (Fla. 1st DCA Dec. 13, 1984), will be referred to herein as Petitioner. The State of Florida, the prosecution and appellee below will be referred to herein as Respondent.

Respondent has attached hereto an appendix containing the opinion of the lower court. Citations to the appendix will be indicated parenthetically as "A" with the appropriate page number(s).

STATEMENT OF THE CASE AND FACTS

Respondent, for purposes of resolving the narrow jurisdictional issue raised herein, accepts as accurate Petitioner's Statement of the Case and Facts set forth at pages 2 and 3 of his jurisdictional brief.

STATEMENT OF JURISDICTION

Petitioner seeks to invoke this Court's discretionary review of the decision below pursuant to Article V, Section 3(b)(3) of the Constitution of the State of Florida and Fla.R. App.P. 9.030(a)(2)(A)(iv) on the ground that said decision is in express and direct conflict with a decision of another district court of appeal on the same question of law.

SUMMARY OF ARGUMENT

Respondent notes that the lower court recognized that its decision was in conflict with that of the Third District Court of Appeal in Whitehead v. State, 450 So.2d 545 (Fla. 3d DCA 1984), discretionary review pending, Case No. 65,492, (A 2), and therefore concurs with Petitioner's assertion that requisite conflict has been established.

ARGUMENT

RESPONDENT CONCURS WITH PETITIONER'S
ASSERTION THAT THE REQUISITE CONFLICT
BETWEEN THE DECISION BELOW AND THAT
OF ANOTHER DISTRICT COURT OF APPEAL HAS
BEEN ESTABLISHED.

Petitioner asserts that the decision of the lower tribunal is in conflict with the Third District's decision in Whitehead v. State, 450 So.2d 545 (Fla. 3d DCA 1984), discretionary review pending, Case No. 65,492. Inasmuch as the lower tribunal recognized that its decision was in conflict with Whitehead, (A 2), Respondent agrees that Petitioner has established the requisite conflict for purposes of invoking this Court's discretionary review pursuant to Article V, Section 3(b)(3) of the Constitution of the State of Florida and Fla.R. App.P. 9.030(a)(2)(A)(iv).

CONCLUSION

Based upon the foregoing argument and the authority cited herein, Respondent submits that Petitioner has established the requisite conflict for purposes of invoking this Court's discretionary review of the decision below.

WHEREFORE, Respondent respectfully moves this Honorable Court to grant conflict certiorari review over the decision below, set the cause for oral argument, and following briefing on the merits, affirm the decision sought to be reviewed.

Respectfully submitted:

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ATTORNEY GENERAL



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COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been forwarded to P. Douglas Brinkmeyer, Assistant Public Defender, Post Office Box 671, Tallahassee, Florida 32302, this 11th day of February, 1985.



GREGORY G. COSTAS