

IN THE  
SUPREME COURT OF FLORIDA

---

---

STATE OF FLORIDA,  
Petitioner,  
V.  
HERMAN JOHNSON, JR.,  
Respondent.

---

---

CASE NO. 66,552

---

JURISDICTIONAL BRIEF OF PETITIONER

JIM SMITH  
ATTORNEY GENERAL

THOMAS H. BATEMAN, III  
ASSISTANT ATTORNEY GENERAL

DEPARTMENT OF LEGAL AFFAIRS  
THE CAPITOL  
TALLAHASSEE, FLORIDA 32301  
(904) 488-0600

COUNSEL FOR PETITIONER

**FILED**

SID J. WHITE

FEB 21 1985

CLERK, SUPREME COURT

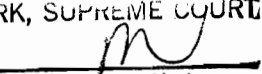
By   
Chief Deputy Clerk

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF CITATIONS	ii
PRELIMINARY STATEMENT	1
STATEMENT OF THE CASE AND FACTS	2
SUMMARY OF ARGUMENT	3
STATEMENT OF JURISDICTION	3
ARGUMENT	5
THE FLORIDA SUPREME COURT SHOULD GRANT CERTIORARI BECAUSE THE DECISION RENDERED BY THE DISTRICT COURT EXPRESSLY AND DIRECTLY CONFLICTS WITH DECISIONS OF OTHER DISTRICT COURTS OF APPEAL	
CONCLUSION	7
CERTIFICATE OF SERVICE	7
APPENDIX	

TABLE OF CITATIONS

<u>CASE</u>	<u>PAGE</u>
<u>Bell v. State</u> , 9 F.L.W. 2504 (Fla. 5th DCA 1984)	3
<u>Brady v. State</u> , 457 So.2d 544 (Fla. 2d DCA 1984)	3
<u>Burke v. State</u> , 456 So.2d 1245 (Fla. 5th DCA 1984)	3
<u>Carter v. State</u> , 452 So.2d 953 (Fla. 5th DCA 1984)	4
<u>Fleming v. State</u> , 456 So.2d 1300 (Fla. 2d DCA 1984)	3
<u>Harvey v. State</u> , 450 So.2d 926 (Fla. 4th DCA 1984)	3
<u>Johnson v. State</u> , 10 F.L.W. 18 (Fla. 1st DCA 1985)	1
<u>Klapp v. State</u> , 456 So.2d 970 (Fla. 2d DCA 1984)	3
<u>Mancini v. State</u> , 312 So.2d 732 (Fla. 1975)	6
<u>Oden v. State</u> , 9 F.L.W. 2658 (Fla. 1st DCA 1984), on reh., 10 F.L.W. 337 (Fla. 1st DCA 1985)	4,6
<u>Rutlin v. State</u> , 455 So.2d 1347 (Fla. 5th DCA 1984)	4
<u>Smith v. State</u> , 454 So.2d 90 (Fla. 2d DCA 1984)	3
<u>Wainwright v. Witt</u> , U.S. (1985), Case No. 83-1427, slip op. filed January 21, 1985	4
<u>Webster v. State</u> , 9 F.L.W. 2419 (Fla. 2d DCA 1984)	3

TABLE OF CITATIONS (cont'd)

OTHER AUTHORITIES

PAGE

Art. V, § 3(b)(3), Fla. Const.

3

Fla.R.App.P. 9.030(a)(2)(A)(iv)

3,4

IN THE  
SUPREME COURT OF FLORIDA

STATE OF FLORIDA,  
Petitioner,

Vs. CASE NO. 66,552

HERMAN JOHNSON, JR.,  
Respondent.

\_\_\_\_\_ /

JURISDICTIONAL BRIEF OF PETITIONER

PRELIMINARY STATEMENT

The State of Florida was the prosecution in the trial court, the appellee in the First District Court of Appeal in Johnson v. State, 10 F.L.W. 18 (Fla. 1st DCA 1984), and will be referred to in this brief as "the State."

Herman Johnson, Jr. was the defendant in the trial court, the appellant in the appellate court and will be referred to in this brief as "the Defendant."

STATEMENT OF THE CASE AND FACTS

The State accepts the opinion rendered by the First District Court of Appeal in this cause as an accurate summary of the facts necessary for the disposition of this case. (Copies of the District Court's opinions are attached hereto as Appendix A and B).

SUMMARY OF ARGUMENT/  
STATEMENT OF JURISDICTION

The State seeks to invoke the discretionary jurisdiction of this Honorable Court pursuant to Article V, Section 3(b)(3) of the Constitution of the State of Florida and Rule 9.030(a)(2)(A)(iv) inasmuch as the First District Court's opinion in this cause expressly and directly conflicts with decisions of the Second District, the Fourth District and the Fifth District Courts of Appeal. The decision expressly conflicts with the following cases:

A. Second District Court of Appeal

1. Brady v. State, 457 So.2d 544 (Fla. 2d DCA 1984).
2. Fleming v. State, 456 So.2d 1300 (Fla. 2d DCA 1984).
3. Klapp v. State, 456 So.2d 970 (Fla. 2d DCA 1984).
4. Smith v. State, 454 So.2d 90 (Fla. 2d DCA 1984).
- \*5. Webster v. State, 9 F.L.W. 2419 (Fla. 2d DCA 1984).

B. Fourth District Court of Appeal

- \*1. Harvey v. State, 450 So.2d 926 (Fla. 4th DCA 1984).

C. Fifth District Court of Appeal

1. Bell v. State, 9 F.L.W. 2504 (Fla. 5th DCA 1984)
- \*2. Burke v. State, 456 So.2d 1245 (Fla. 5th DCA 1984)

---

\* These decisions were cited by the First District Court as being in conflict with the decision in the instant case.

C. Fifth District Court of Appeal (continued)

3. Carter v. State, 452 So.2d 953  
(Fla. 5th DCA 1984).
4. Rutlin v. State, 455 So.2d 1347  
(Fla. 5th DCA 1984).

Finally, the State notes that on February 7, 1984, the First District Court of Appeal in Oden v. State, 9 F.L.W. 2658 (Fla. 1st DCA 1984), on reh., 10 F.L.W. 337 (Fla. 1st DCA 1985), certified conflict pursuant to Fla.R.App.P. 9.030(a)(2)(A)(iv) with many of the above cited cases. However, the District Court denied the State's suggestion to certify conflict in this case.



## ARGUMENT

THE FLORIDA SUPREME COURT SHOULD GRANT  
CERTIORARI BECAUSE THE DECISION RENDERED  
BY THE DISTRICT COURT EXPRESSLY AND  
DIRECTLY CONFLICTS WITH DECISIONS OF  
OTHER DISTRICT COURTS OF APPEAL.

The State submits this Honorable Court should grant certiorari in this cause as the First District Court of Appeal's decision below is in express and direct conflict with decisions of the Second, Fourth and Fifth District Courts of Appeal. The issue is whether a trial judge is required to complete a separate written document delineating his clear and convincing reasons for departure from the sentencing guidelines or whether the trial court's oral pronouncement, on the record, stating with particularity his clear and convincing reasons for departure is sufficient to satisfy the writing requirement of the Florida Rules of Criminal Procedure.

In the cause sub judice, the First District Court held the trial judge's reasons for departure were clear and convincing. However, the District Court remanded to the trial court for re-sentencing for the trial judge to express the reason for departure in writing. It said the oral pronouncement is not sufficient to uphold the trial court's sentence. (Appendix A at p. 3).

The utter judicial wastefulness of sending the case back to the trial court once the District Court has reviewed

it and affirmed the case on the merits is obvious. As the United States Supreme Court recently said in Wainwright v. Witt, \_\_\_ U.S. \_\_\_ (1985), Case No. 83-1427, slip op. filed January 21, 1985:

Anyone familiar with trial court practice knows that the court reporter is relied upon to furnish an accurate account of what is said in the courtroom. The trial judge regularly relies upon this transcript as written indicia of various findings and rulings; it is not uncommon for a trial judge to merely make extemporaneous statements of findings from the bench.

Our decision is strengthened by a review of available alternatives . . . . A trial judge's job is difficult enough without senseless make-work.

Slip opinion at pp. 17-18.

In order for two or more court decisions to be in express and direct conflict for the purpose of invoking this Honorable Court's jurisdiction, the decisions should speak to the same point of law. See generally Mancini v. State, 312 So.2d 732 (Fla. 1975). The cases cited by the State at pages 3 and 4 of this brief certainly satisfy this requirement. Moreover, inasmuch as the First District itself indicated in its opinion it was in conflict with the Second, Fourth and Fifth Districts, the existence of a conflict is obvious. (Appendix A at p. 3). This is particularly true where the First District, after deciding the instant cause and denying the State's suggestion of certification, certifies conflict in Oden based upon the precise cases heretofore cited.

CONCLUSION

Based on the foregoing demonstration of conflict between the District Court's decision in this cause with the decisions of other district court decisions, the State respectfully requests this Honorable Court grant certiorari in order to reconcile the various conflicting decisions.

Respectfully submitted

JIM SMITH  
ATTORNEY GENERAL

*Thomas H. Bateman, III*

THOMAS H. BATEMAN, III  
ASSISTANT ATTORNEY GENERAL

DEPARTMENT OF LEGAL AFFAIRS  
THE CAPITOL  
TALLAHASSEE, FLORIDA 32301  
(904) 488-0600

COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing brief has been forwarded by hand delivery to Mr. Carl McGinnes, Assistant Public Defender, Post Office Box 671, Tallahassee, Florida 32302, on this 21<sup>st</sup> day of February, 1985.

*Thomas H. Bateman, III*

THOMAS H. BATEMAN, III  
ASSISTANT ATTORNEY GENERAL