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AUTHORITIES CITED

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CASES CITED

Hudson v. State, 425 So.2d 1166  
(Fla. 2nd DCA 1983)

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OTHER AUTHORITIES

Florida Constitution  
Article V, Section 3(b)(3)

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PRELIMINARY STATEMENT

Petitioner was the defendant in the Criminal Division of the Circuit Court of the Seventeenth Judicial Circuit, In and For Broward County, Florida, and the appellant in the District Court of Appeal, Fourth District. Respondent was the prosecution and appellee in the lower courts. In the brief the parties will be referred to as they appear before this Honorable Court.

STATEMENT OF THE CASE AND OF THE FACTS

Petitioner was placed on probation for robbery and for assault. A special condition of the probation was that petitioner spend four months at a "restitution center." Appendix, page 1. The Department of Corrections filed an affidavit charging that petitioner had violated his probation by failing to perform "house duties as scheduled by staff" at the restitution center. R31.<sup>1</sup>

After an evidentiary hearing, trial court found that petitioner had violated his probation, revoked probation, and sentenced him to two years in prison. Petitioner appealed, and the District Court of Appeal upheld the revocation of probation, writing: "After reviewing the briefs and the record on appeal in this cause, we find the appellant failed to demonstrate that his probation violation was not willful and substantive." Appendix, page 3. Petitioner now seeks discretionary review in this court.

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<sup>1</sup> There does not seem to have been any special condition of probation that petitioner perform "house duties."

SUMMARY OF ARGUMENT

The decision of the lower court directly and expressly conflicts with the decision in Hudson v. State, 425 So.2d 1166 (Fla. 2nd DCA 1983), in that the two decisions set forth different and conflicting burdens of proof in violation of probation cases. Hence this Court should accept jurisdiction in this cause and resolve the conflict.

### REASONS FOR ACCEPTING JURISDICTION

Article V, Section 3(b)(3), Florida Constitution confers on this Court jurisdiction to review any district court decision that "expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law."


At bar, the decision of the lower court directly and expressly conflicts with the decision in Hudson v. State, 425 So.2d 1166 (Fla. 2nd DCA 1983). There the court wrote: "In achieving the revocation of a defendant's probation, it is incumbent upon the state to establish that the defendant willfully violated the terms of his probation." 425 So.2d at 1167 (emphasis supplied). The lower court in the case at bar, however, shifted the burden of proof away from the state on this point, writing: "After reviewing the briefs and the record on appeal in this cause, we find the appellant failed to demonstrate that his probation violation was not willful and substantive." Appendix, page 3. Thus the decision of the lower court at bar directly and expressly conflicts with the decision in Hudson as to the burden of proof in probation cases. Although the opinions involved are rather brief, the issue involved is sufficiently important to merit consideration and resolution by this Court.

CONCLUSION

This Court should accept jurisdiction over this cause.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished by courier to Lee Rosenthal, Assistant Attorney General, 111 Georgia Avenue, Elisha Newton Dimick Building, West Palm Beach, Florida, 33401 this 13th day of May, 1985.

  
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Of Counsel