



TABLE OF CONTENTS

	<u>PAGE NO.</u>
TABLE OF CONTENTS	i
TABLE OF CITATIONS	ii
STATEMENT OF THE CASE AND FACTS	1
SUMMARY OF ARGUMENT	2
ISSUE	3
WHETHER EXPRESS AND DIRECT CONFLICT EXISTS BETWEEN STATE V. R.L.B., 10 FLW 1040 (FLA.5th DCA APRIL 25, 1985) AND STATE V. C.C., 449 So.2d 28 (FLA.3d DCA 1983)	
CONCLUSION	4
CERTIFICATE OF SERVICE	4

TABLE OF CITATIONS

PAGE NO.

CASES CITED:

<u>State v. C.C.</u> 449 So.2d 28 (Fla. 3d DCA 1983)	3
<u>State v. R.L.B.</u> 10 FLW 1040 (Fla. 5th DCA April 25, 1985)	1,3
<u>State v. W.A.M.</u> 412 So.2d 49 (Fla. 5th DCA); <u>review denied</u> 419 So.2d 1201 (Fla. 1982)	3

STATEMENT OF THE CASE AND FACTS

Petitioner R.L.B., a child, was arrested for shoplifting on August 3, 1984 (R16)<sup>1/</sup>, and a detention petition was thereafter filed in the Circuit Court for Seminole County on August 4, 1984 seeking that R.L.B. be detained at the Seminole Regional Juvenile Detention Center (R13-15). On August 6, 1984 R.L.B. was released to the custody of his mother (R26).

That same day, R.L.B. appeared before the Honorable Kenneth Leffler. After conferring with counsel, R.L.B. entered a plea of guilty to retail theft. The Court accepted the plea, withheld adjudication of delinquency and directed the state to file a Petition for Delinquency (R28).

On August 31, 1984 Judge Leffler entered an Order of Dismissal of the matter due to the state's failure to file the Petition for Delinquency as directed (R30).

Upon timely appeal (R31), the Fifth District Court of Appeal reversed the order. State v. R.L.B., 10 FLW 1040 (Fla. 5th DCA April 25, 1985) (see Appendix "A"). A Timely Notice to Invoke Discretionary Jurisdiction was thereafter filed by R.L.B. This Brief on Jurisdiction follows.

<sup>1/</sup> (R ) refers to the Record on Appeal of the instant cause, Fifth District Court of Appeal Case no. 84-1287

SUMMARY OF ARGUMENT

The instant case decides an appeal on its merits, but in doing so specifically acknowledges a case from another district holding that no appellate jurisdiction exists to review such matters. Express and direct conflict facially exists in the holdings of different courts of appeal. Therefore, discretionary jurisdiction exists for this Court to review the conflicting decisions.

ISSUE

WHETHER EXPRESS AND DIRECT CONFLICT  
EXISTS BETWEEN STATE V. R.L.B.,  
10 FLW 1040 (FLA 5TH DCA APRIL 25,  
1985) AND STATE V. C.C., 449 So.2d  
28 (FLA. 3d DCA 1983).

In State v. R.L.B., 10 FLW 1040 (Fla. 5th DCA April 25, 1985) the Fifth District Court of Appeal decided a state appeal of a juvenile case on the merits. In doing so, the court noted, "We are committed to the view that the state has the right to appeal in such cases, State v. W.A.M., 412 So.2d 49 (Fla. 5th DCA); review denied 419 So.2d 1201 (Fla. 1982), although we recognize a conflict with our sister court on this issue. State v. C.C., 449 So.2d 280 (Fla. 3d DCA 1983). . . ." R.L.B., supra at 1040 (emphasis added).


In State v. C.C., 449 So.2d 280 (Fla. 3d DCA 1983), (see Appendix "B") the Third District Court of Appeal dismissed a state appeal of a juvenile matter, holding that no jurisdiction existed upon which to base an appeal.

CONCLUSION

Because the two cases recognize conflict and because the decisions reach fundamentally different conclusions, this Court is respectfully asked to exercise its discretionary jurisdiction and to entertain this matter on its merits.

Respectfully submitted


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been mailed to the Honorable Jim Smith, Attorney General at 125 N. Ridgewood Avenue, Fourth floor, Daytona Beach, Florida 32014 and mailed to R.L.B. 4540 Welton Place, Orlando, Florida 32802 on this 16th day of May 1985.

  
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