

**FILED**

SID J. WHITE

JUN 10 1985

CLERK, SUPREME COURT

By [Signature]  
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 NATHANIEL HILL, a/k/a )  
 NATHANIEL WILCOX, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

63,110

CASE NO. 84-1704

PETITIONER'S BRIEF ON JURISDICTION

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PRELIMINARY STATEMENT

The Petitioner, the State of Florida, was the Appellee in the Fourth District Court of Appeal and the Prosecution in the Criminal Division of the Circuit Court of the Seventeenth Judicial Circuit, in and for Broward County, Florida. The Respondent was the Appellant and the Defendant, respectively, 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 FACTS

The Respondent was convicted of robbery with a deadly weapon, and the trial court then departed from the sentencing guidelines in sentencing Respondent to fifteen years in prison. The trial court, in departing, stated its reasons in the record, and they were so transcribed. A separate written statement by the trial court, of its reason for departure, was not made. On appeal to the Fourth District Court of Appeal, Respondent contended that the trial court improperly departed by failing to state its reasons in a written statement. The appellate court affirmed Respondent's conviction, but vacated his sentence and remanded pursuant to its decision in Boynton v. State, 10 FLW 795 (Fla. 4th DCA Mar. 27, 1985)(Exhibit A).

The Petitioner filed a motion for rehearing, asking the court to stay the issuance of mandate in the instant case until State v. Boynton, Fla. S.Ct. No. 66,971, was resolved by this Court. (Exhibit B). The court denied the Petitioner's motion on May 22, 1985. (Exhibit C). Accordingly, the Petitioner filed a notice to invoke this Court's discretionary jurisdiction.

POINT INVOLVED

WHETHER THERE IS EXPRESS AND DIRECT CONFLICT BETWEEN THE DECISION OF THE COURT OF APPEAL AND OTHER DISTRICTS ON THE POINT OF LAW CONCERNING WHETHER A TRIAL JUDGE IS REQUIRED TO SET FORTH IN WRITING THE REASONS FOR DEPARTING FROM THE PRESUMPTIVE GUIDELINES SENTENCE?

SUMMARY ARGUMENT

The Fourth District Court of Appeal vacated Respondent's sentence and remanded pursuant to Boynton v. State, supra. Boynton acknowledges conflict with other district courts, and certifies a question to this Court. This Court has accepted jurisdiction to review Boynton, the State of Florida has filed its merits brief, and it is presently pending before this Court. The instant case is directly on point with Boynton, so pursuant to Jollie v. State, infra, it too can be deemed in conflict with decisions of the other district courts cited within Boynton. Accordingly, the Petitioner has properly invoked this Court's discretionary jurisdiction.

## ARGUMENT

THE PETITIONER HAS PROPERLY INVOKED THIS COURT'S JURISDICTION BECAUSE THERE IS CONFLICT BETWEEN THE OPINION BELOW AND OTHER DISTRICTS ON THE LEGAL ISSUE OF WHETHER A TRIAL JUDGE IS REQUIRED TO SET FORTH IN WRITING THE REASONS FOR DEPARTING FROM THE PRESUMPTIVE GUIDELINES SENTENCE.

The Petitioner has invoked this Court's "conflict" jurisdiction under Article V, §3(b)(3) of the Florida Constitution and Rule 9.030(a)(2)(A)iv, Fla.R.App.P. Conflict exists between the instant decision, considered in conjunction with Boynton v. State, 10 FLW 795 (Fla. 4th DCA Mar. 27, 1985), discretionary review accepted, State v. Boynton, FSC No. 66,971, and the decisions of Burke v. State, 456 So.2d 1245 (Fla. 5th DCA 1984), Brady v. State, 457 So.2d 544 (Fla. 2nd DCA 1984), and Klapp v. State, 456 So.2d 970 (Fla. 2nd DCA 1984), which are cited in Boynton.

Conflict jurisdiction is properly invoked when a District Court of Appeal either (1) announces a rule of law which conflicts with a rule previously announced by the Supreme Court or another district, or (2) applies a rule of law to produce a different result in a case which involves substantially the same facts as another case. Mancini v. State, 312 So.2d 732, 733 (Fla. 1975). Moreover, a District Court of Appeal per curiam opinion which cites as controlling authority a decision that is pending review in this Court continues to constitute prima facie express conflict which allows this Court to exer-



cise its jurisdiction. Jollie v. State, 405 So.2d 418, 420 (Fla. 1981).

The decision in the case sub judice states:

We affirm appellant's conviction but vacate his sentence and remand this cause for resentencing with directions that any resentencing be in accord with the sentencing guidelines or that separate written findings be entered if the sentence deviates from the guidelines. See Boynton v. State, 10 FLW 795 (Fla. 4th DCA Mar. 27, 1985).

In Boynton (Exhibit D), the court created conflict by the first means outlined in Mancini, for it announced a rule of law contrary to that announced in other district courts: "We acknowledge the conflict that exists among the district courts as to this issue, and certify to the Supreme Court the following question ...". Boynton, supra. The Boynton opinion recognized its conflict with the decisions in Burke, supra, Brady, supra, and Klapp, supra, and certified a question to this Court. The rule announced in Boynton was that the trial judge was required to set forth in writing the reasons for departing from the presumptive sentence, and that dictation into the record of the reasons for departure was insufficient; whereas, in Burke, supra, Brady, supra, and Klapp, supra, the district courts held that dictation into the record of clear and convincing reasons was sufficient. Petitioner submits that the Fourth District acknowledged the conflict in its Boynton opinion, and it so certified a question to this Court.

This Court has accepted jurisdiction to review

Boynton, the State of Florida has filed its merits brief, and it is presently pending before this Court. The instant case is directly on point with Boynton, so pursuant to Jollie v. State, supra, it too can be deemed in conflict with Burke, supra, Brady, supra, and Klapp, supra. Accordingly, the Petitioner has properly invoked this Court's discretionary jurisdiction.

CONCLUSION

WHEREFORE, based on the foregoing reasons and authorities cited therein, the Petitioner respectfully requests that this Honorable Court accept jurisdiction of the instant case.

Respectfully submitted,

JIM SMITH  
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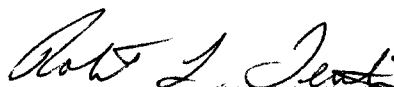
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petitioner's Brief on Jurisdiction has been furnished, by courier delivery, to TATJANA OSTAPOFF, ESQUIRE, Assistant Public Defender, Public Defender's Office, 224 Datura Street, 13th Floor, West Palm Beach, Florida 33401, this 7th day of June, 1985.



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Of Counsel