

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

vs.

JULIAN TAFT,

Respondent.

CASE NO. 67165

FILED

SID J. WHITE

JUN 28 1985

CLERK, SUPREME COURT

By [Signature] Chief Deputy Clerk

RESPONDENT'S

ANSWER BRIEF ON JURISDICTION

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PRELIMINARY STATEMENT

Respondent was the defendant in the Criminal Division of the Circuit Court of the Nineteenth Judicial Circuit, In and for Martin County, Florida, and the appellant in the District Court of Appeal, Fourth District. Petitioner 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

Respondent plead no contest to two charges of lewd assault. The crimes occurred on May 21, 1984. The case came up for sentencing on October 10, 1984. In sentencing respondent, the trial court used the amended sentencing guidelines which went into effect in July of 1984. On appeal, the District Court of Appeal ruled that the trial court erred in failing to use the sentencing guidelines as they existed on May 21, 1984.

SUMMARY OF ARGUMENT

The decision of the Fourth District Court of Appeal below conflicts neither with the decisions of other district courts of appeal nor with decisions of this Court.

## ARGUMENT

### THE DECISION BELOW DOES NOT CONFLICT WITH OTHER APPELLATE COURT DECISIONS

Petitioner, the State of Florida, apparently seeks to invoke the discretionary jurisdiction of this Court pursuant to Article V, Section 3(b)(3), Florida Constitution (1968 amended), which vests this Court with the power to review a district court decision which expressly or directly conflicts with a decision of another district court or of this Court on the same question of law. In its initial brief on jurisdiction, petitioner has failed to show any such conflict with respect to the decision below.

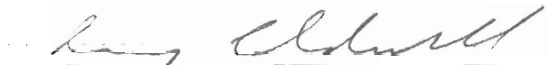
In its brief, petitioner relies on three cases: Randolph v. State, 458 So.2d 64 (Fla. 1st DCA 1984), Saunders v. State, 9 FLW 2378 (Fla. 1st DCA November 14, 1984), and Jackson v. State, 454 So.2d 691 (Fla. 1st DCA 1984). In each of those cases, the trial court erred by using amendments to the guidelines which were not yet in effect at the time of sentencing. None of those cases involve the instant question resolved by the lower court at bar, namely: where the guidelines are amended between the date of the crime and the date of sentencing, and the amendment serves to increase the recommended punishment of the defendant, which guidelines apply? Randolph, Saunders, and Jackson do not even address the point, much less conflict with the lower court decision on the point. Hence, there is no basis for this Court to exercise its jurisdiction in this cause.

CONCLUSION

This is not a proper case for discretionary review by this Court.


Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished by courier to Noel A. Pelella, Assistant Attorney General, 111 Georgia Avenue, Elisha Newton Dimick Building, West Palm Beach, Florida, 33401 this 25th day of June, 1985.

  
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Of Counsel