

IN THE FLORIDA SUPREME COURT

STATE OF FLORIDA,

Petitioner,

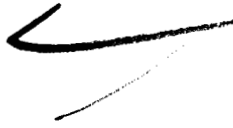
v.

CASE NO. 67,244

TONY LEE MOORE,

Respondent.

**FILED**  
 SID J. WHITE  
 JUL 18 1985  
 CLERK, SUPREME COURT  
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RESPONDENT'S JURISDICTIONAL BRIEF

MICHAEL E. ALLEN  
PUBLIC DEFENDER  
SECOND JUDICIAL CIRCUIT

PAULA S. SAUNDERS  
ASSISTANT PUBLIC DEFENDER  
POST OFFICE BOX 671  
TALLAHASSEE, FLORIDA 32302  
(904) 488-2458

ATTORNEY FOR RESPONDENT

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IN THE FLORIDA SUPREME COURT

STATE OF FLORIDA, :  
 :  
 Petitioner, :  
 :  
 v. : CASE NO. 67,244  
 :  
 TONY LEE MOORE, :  
 :  
 Respondent. :  
 \_\_\_\_\_ :

RESPONDENT'S JURISDICTIONAL BRIEF

I PRELIMINARY STATEMENT

Respondent was the defendant in the trial court and the appellant in the First District Court of Appeal. Petitioner was the prosecution and appellee respectively.

Attached hereto as an appendix is the decision of the First District Court of Appeal in Moore v. State, 10 FLW 1357 (Fla. 1st DCA June 4, 1985).

II STATEMENT OF THE CASE AND FACTS

Respondent accepts petitioner's statement of the case and facts.

### III ARGUMENT

#### ISSUE PRESENTED

WHETHER THE DECISION OF THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, IS IN DIRECT CONFLICT ON THE SAME POINT OF LAW WITH THE DECISIONS IN BRADY v. STATE, 457 So.2d 544 (Fla. 2d DCA 1984); SMITH v. STATE, 454 So.2d 90 (Fla. 2d DCA 1984); KLAPP v. STATE, 456 So.2d 970 (Fla. 2d DCA 1984); BURKE v. STATE, 456 So.2d 1245 (Fla. 5th DCA 1984), AND FLEMING v. STATE, 456 So.2d 1300 (Fla. 2d DCA 1984).

The First District Court of Appeal held in the instant case that a written statement of reasons for departure from the recommended guidelines sentence is expressly required by Florida Rule of Criminal Procedure 3.701(d)(11), relying upon its prior decisions in Jackson v. State, 454 So.2d 691 (Fla. 1st DCA 1984), discretionary review pending, State v. Jackson, Case No. 65,857; Millett v. State, 460 So.2d 489 (Fla. 1st DCA 1984); Johnson v. State, 462 So.2d 49 (Fla. 1st DCA 1984), and Hernandez v. State, 465 So.2d 577 (Fla. 1st DCA 1985).

As petitioner correctly notes, the Second District Court of Appeal has held, contrary to the First District, that written reasons are not required where the trial judge provides oral reasons which are transcribed and made part of the record. This Court is thus squarely presented with conflicting rulings on the same point of law: whether reasons for departure must be in writing.<sup>1</sup>

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<sup>1</sup>/ The identical issue is currently pending before this Court in State v. Jackson, Case No. 65,857.

Respondent therefore agrees with petitioner that this Court has discretionary jurisdiction pursuant to Article V, Section 3(b)(3), Florida Constitution, and requests an opportunity to fully address the issue in a brief on the merits.

IV CONCLUSION

The decision of the District Court of Appeal, First District expressly and directly conflicts with decisions of other district courts of appeal on the same point of law, and this Court has jurisdiction under Article V, Section 3(b)(3), Florida Constitution. Discretionary review should be granted.

Respectfully submitted,

MICHAEL E. ALLEN  
PUBLIC DEFENDER  
SECOND JUDICIAL CIRCUIT

Paula S. Saunders  
PAULA S. SAUNDERS  
Assistant Public Defender  
Post Office Box 671  
Tallahassee, Florida 32302  
(904) 488-2458

ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above Respondent's Jurisdictionat Brief has been furnished by hand to Assistant Attorney General Wallace Allbritton, The Capitol, Tallahassee, Florida 32301; and by U.S. Mail to respondent, Tony Lee Moore, #727517, Post Office Box 699, Sneads, Florida 32460 on this 18<sup>th</sup> day of July, 1985.

Paula S. Saunders  
PAULA S. SAUNDERS