

IN THE SUPREME COURT OF FLORIDA

67445

ANTHONY L. WRIGHT, )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 STATE OF FLORIDA, )  
 )  
 Respondent. )

CASE NO.

PETITIONER'S BRIEF ON JURISDICTION

JAMES B. GIBSON  
PUBLIC DEFENDER  
SEVENTH JUDICIAL CIRCUIT

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ATTORNEY FOR PETITIONER

**FILED**  
 SID J. WHITE  
 /AUG 14 1985  
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 By [Signature]  
 Chief Clerk

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STATE OF FLORIDA,            )  
                                  )  
                          Respondent.    )  
\_\_\_\_\_                          )

CASE NO.

PETITIONER'S BRIEF ON JURISDICTION

PRELIMINARY STATEMENT

Petitioner was the Appellant in the Fifth District Court of Appeal and Respondent was the Appellee. In the brief the parties will be referred to as they appear before this Honorable Court.

The following symbol will be used:

"R" - Record on appeal.

STATEMENT OF THE CASE AND FACTS

Petitioner was charged by an information filed in the Circuit Court of Orange County, Florida, with sale and possession of cannabis. (R 264) He was tried by a jury on May 15, 1984, and was found guilty as charged. (R 236, 237) He was sentenced on June 27, 1984, pursuant to the sentencing guidelines to spend thirty months in prison for sale of cannabis; no sentence was imposed for possession of cannabis. (R 289-290)

Notice of appeal was timely filed on July 9, 1984, and the Office of the Public Defender was appointed to represent Petitioner on appeal. (R 296, 292) His convictions were affirmed by the Fifth District Court of Appeal on May 30, 1985. (Appendix 1) A motion for rehearing was denied on July 3, 1985. Notice to invoke discretionary jurisdiction was timely filed in the Fifth District Court of Appeal on August 2, 1985.

ARGUMENT

THE DISTRICT COURT OF APPEAL'S  
DECISION DIRECTLY AND EXPRESSLY  
CONFLICTS WITH THE DECISIONS IN  
ANDREWS V. STATE, 459 So. 2d  
1018 (Fla. 1984); JONES V. STATE,  
464 So. 2d 547 (Fla. 1985); JONES  
V. STATE, 466 So. 2d 301 (Fla. 3d  
DCA 1985); and FRANKS V. STATE,  
467 So. 2d 400 (Fla. 4th DCA 1985).

Petitioner argued in the District Court of Appeal that his convictions should be reversed and remanded because the trial court did not utilize the test outlined by this Honorable Court in State v. Neil, 457 So. 2d 481 (Fla. 1984), which is to be applied when an objection is made by one party in a criminal case to the other party's use of peremptory challenges and the court finds a substantial likelihood exists that the peremptory challenges are being exercised solely on the basis of race. (Appendix 1; R 90-92) The Third District Court of Appeal, in Jones v. State, 466 So. 2d 301 (Fla. 3d DCA 1985), and the Fourth District, in Franks v. State, 467 So. 2d 400 (Fla. 4th DCA 1985), have applied Neil to "pipeline" cases, i. e. cases in which the issue was properly preserved and which was pending when Neil was decided on September 27, 1984. The Fifth District Court of Appeal, however, held in this case that Neil should apply only to those cases going to trial subsequent to the decision in Neil. (Appendix 1) Petitioner's trial was held on May 15, 1984. His appeal was pending at the time of the decision in Neil.

The Fifth District Court of Appeal's decision directly and expressly conflicts with Jones and Franks, supra, and with this Honorable Court's decision in Jones v. State, 464 So. 2d 547 (Fla. 1985), wherein the notice of appeal was

filed in 1982, and which reversed Jones' conviction on the basis of State v. Neil. See also, Finklea v. State, 470 So. 2d 90 (Fla. 1st DCA 1985).

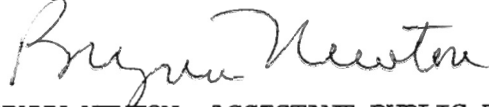
Because the District Court's decision in this case expressly and directly conflicts with the decisions of this Honorable Court and of other District Courts of Appeal, this Honorable Court has jurisdiction over this cause.

CONCLUSION

For the reasons expressed herein, Petitioner respectfully requests that this Honorable Court exercise jurisdiction over this cause, and review the District Court of Appeal's decision herein.

Respectfully submitted,

JAMES B. GIBSON, PUBLIC DEFENDER  
SEVENTH JUDICIAL CIRCUIT



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to the Honorable Jim Smith, Attorney General, by mail, at 125 N. Ridgewood Avenue, Daytona Beach, Florida, and to Mr. Anthony L. Wright, P. O. Box 628, Lake Butler, Florida, this 12th day of August, 1985.



ATTORNEY