

IN THE SUPREME COURT OF FLORIDA

JOHNNY LEE KEYS, JR.,
Petitioner,
vs.
STATE OF FLORIDA,
Respondent.

CASE NO. 67,504

FILED
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RESPONDENT'S BRIEF ON JURISDICTION

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SUMMARY OF ARGUMENT

The petitioner has demonstrated no express and direct conflict between the decision at issue and any specific decision of another district court or of this court. While the district court opinion does refer to decisions for which review is pending before this court that fact in and of itself does not justify this court's discretionary exercise of jurisdiction under the particular facts of this case. Simple reference by the district court in its opinion to other decisions now pending before this tribunal should not justify the extraordinary exercise of discretionary jurisdiction sought where those prior decisions were multi-faceted in nature and where their disposition would not necessarily alter the district court's affirmance of the trial court in this cause.

ARGUMENT

PETITIONER HAS FAILED TO DEMONSTRATE EXPRESS AND DIRECT CONFLICT BETWEEN THE INSTANT DECISION AND ANY OTHER STATE DISTRICT OR SUPREME COURT OPINION SUFFICIENT TO JUSTIFY AN EXERCISE OF DISCRETIONARY JURISDICTION BY THIS TRIBUNAL.

Petitioner urges this court to exercise its discretionary jurisdiction and review the district court affirmance of the trial court's guidelines sentence departure in this cause because the district court opinion referred to a number of decisions which this court has accepted for review. Respondent submits, however, that this court's decision in Jollie v. State, 405 So.2d 418 (Fla. 1981), relied upon by the petitioner, does not mandate this court's exercise of discretionary jurisdiction in every cause where a district court cites a decision that is pending review in this tribunal; rather, such jurisdiction should be granted only in those cases where the district court relies upon the decision pending review as controlling authority and where it is clear that the specific legal issue or determination that resulted in this court's exercise of jurisdiction in the previous case is also present in the subsequent decision. Certainly, it is obvious that the various decisions referred to by the district court in affirming the lower court in this case were mulit-faceted in nature and dealt with various legal issues such that it is impossible to determine that the particular legal question

or factors which motivated this court to exercise jurisdiction in those cases are also present in this cause and that a decision in those cases would control the disposition of the present cause.

The respondent attaches as an appendix hereto for this court's consideration, the trial court's order of departure affirmed by the district court, as evidence that this cause is undeserving of discretionary review. A clearer case for departure from the guidelines recommendation is difficult to imagine, as the criminal history detailed by the lower court judge clearly portrays a defendant who presents "a continuing and serious threat" and whom "the protection of society requires . . . be institutionalized for a term of imprisonment far in excess of that provided under the sentencing guidelines" (see, appendix, page 2). The obvious import of the trial court's decision to depart, as discerned by the district court is its well supported finding that despite various and repeated punitive and rehabilitative efforts, Keys has continued to engage in an escalating pattern of violent criminal conduct culminating in the crimes at issue from which society must be protected. Inasmuch, as it is impossible to determine that the decisions presently pending before this court and relied upon by the petitioner would necessarily turn upon this same specific factual scenario justifying departure, the respondent submits that the determination of the propriety of the state trial judge's departure order in this cause is not sufficiently tied to those cases to justify the extraordinary remedy of

discretionary review. Certainly, the exact reason for this court's decision to entertain discretionary jurisdiction in those previous cases which involved a multitude of issues is at best unclear such that the district court's reference to those decisions for unspecified purposes is not enough to provide a carte blanche automatically entitling Keys to review in this case.

CONCLUSION

Based on the arguments and authorities presented herein, respondent respectfully prays this honorable court decline to exercise its discretionary jurisdiction in this cause.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing Respondent's Brief on Jurisdiction has been furnished, by mail, to Kenneth Witts, Assistant Public Defender for appellant, at 112 Orange Avenue, Suite A, Daytona Beach, Florida 32014, this 28th day of August, 1985.



SEAN DALY
COUNSEL FOR RESPONDENT