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## SUMMARY OF THE ARGUMENT

The trial court departed from the sentencing guidelines in sentencing Petitioner because Petitioner had additional offenses at conviction in excess of four and the score sheet at the time Petitioner was sentenced provided a single score for any and all convictions in excess of four. In following its decision rendered in Russell v. State, 458 So.2d 422 (Fla. 2d DCA 1984), the Florida District Court of Appeal, Second District, recognized that Russell is in conflict with Young v. State, 455 So.2d 551 (Fla. 1st DCA 1984). However, this Honorable Court should decline to accept jurisdiction of this cause inasmuch as the Florida Rules of Criminal Procedure have been amended so as to preclude the instant issue from ever again arising.

ARGUMENT

ISSUE

WHETHER THIS HONORABLE COURT SHOULD EXERCISE ITS DISCRETIONARY JURISDICTION WHERE THE DECISION IN RUSSELL v. STATE, 458 So.2d 422 (Fla. 2d DCA 1984), AND HENCE THE INSTANT CASE, HAS BEEN RECOGNIZED TO BE IN CONFLICT WITH YOUNG v. STATE, 455 So.2d 551 (Fla. 1st DCA 1984).

In its per curiam affirmance below, the Florida District Court of Appeal, Second District, relied on Russell v. State, 458 So.2d 422 (Fla. 2d DCA 1984). In so doing, the Second District recognized that Russell is in conflict with Young v. State, 455 So.2d 551 (Fla. 1st DCA 1984). Notwithstanding the Second District's expressed recognition of conflict in decisions, this Honorable Court, for the reasons expressed below, should decline to exercise its discretionary jurisdiction in this cause.

At the time Petitioner was sentenced, any additional convictions and prior record offenses in excess of four could not be scored on the score sheet. The trial court, because of this limitation, deviated from the presumptive sentence and as a clear and convincing reason stated that all the offenses committed by Petitioner were not being taken into consideration in the guideline computations. The Second District Court of Appeal in Russell v. State, supra, had previously affirmed a guideline departure based on a trial court aggravating because of a number of prior offenses in excess of four. The First District Court of Appeal, however, has rendered a decision contrary to Russell in Young v. State, supra. The First District opined that the guidelines then in existence contemplated more than

four felonies where the score sheet stated "4". Id., at 552. However, the underlying premise in Young is no longer in existence with the amendment to the guidelines score sheet.


On May 8, 1984, this Honorable Court amended the Florida Rules of Criminal Procedure to provide a changed form for computation which permits scoring offenses in excess of four counts. See The Florida Bar: Amendment to Rules of Criminal Procedure (3.701, 3.988-sentencing guidelines), 451 So.2d 824 (Fla. 1984); Russell, supra, at 423, n.1; Young, supra, at 553, n.2 (Nimmons, J., dissenting). Therefore, inasmuch as this question will never again be presented to the Florida inferior courts, this Honorable Court should decline to exercise its discretionary jurisdiction.

CONCLUSTON

Based upon the foregoing and in the absence of any reason justifying the exercise of this court's discretionary jurisdiction, this Honorable Court should decline to accept jurisdiction in the above-styled cause.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Paul C. Helm, Assistant Public Defender, Hall of Justice Building, 455 North Broadway, Bartow, Florida 33830 this 10<sup>th</sup> day of September, 1985.

  
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OF COUNSEL FOR RESPONDENT