IN THE SUPREME COURT OF FLORIDA

DEBORAH ANN ADAMS,

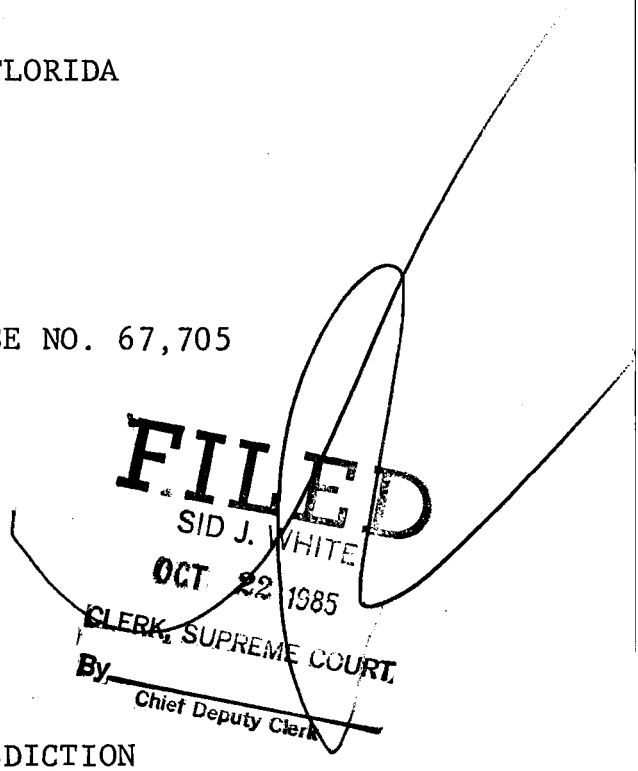
Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

CASE NO. 67,705



RESPONDENT'S BRIEF ON JURISDICTION

JIM SMITH
ATTORNEY GENERAL

KEVIN KITPATRICK CARSON
ASSISTANT ATTORNEY GENERAL
125 N. Ridgewood Avenue
Fourth Floor
Daytona Beach, Florida 32014
(904) 252-1067

COUNSEL FOR RESPONDENT

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AUTHORITIES CITED

SUMMARY OF ARGUMENT

This court should not exercise its discretionary jurisdiction in this case since the findings implicit in the denial of petitioner's "Expedited Emergency Motion for Recall Opinion and Mandate" indicate that the Fifth District Court of Appeal considered this court's opinion in Albritton and did not consider the length of departure from the sentencing guidelines to be an abuse of discretion.

ARGUMENT

THIS COURT SHOULD NOT EXERCISE ITS DISCRETIONARY JURISDICTION IN THIS CASE SINCE THE FINDINGS IMPLICIT IN THE DENIAL OF PETITIONER'S EMERGENCY MOTION FOR RECALL OF MANDATE DEMONSTRATE NO CONFLICT WITH A DECISION OF THIS COURT

Respondent acknowledges prima facie express and direct conflict pursuant to Jollie v. State, 405 So.2d 418 (Fla. 1984) in that the decision of the Fifth District Court of Appeal in the instant case is a per curiam opinion which cites as controlling authority a decision that has been reversed by this court. See, Albritton v. State, 10 F.L.W. 426 (Fla. August 29, 1985). However, respondent contends that this court should not exercise its discretionary jurisdiction for reasons which follow.

Conspicously missing from petitioner's rendition of the history of the case and the facts in the instant appeal is the fact that petitioner failed to move for rehearing and filed an "Expedited Emergency Motion to Recall Opinion and Mandate" bringing to the attention of the district court of appeal the decision of this court in Albritton, supra. (A - 1) The district court of appeal denied respondent's motion (A - 2) and respondent asserts that the finding implicit in the denial is that the appellate court considered this court's decision in Albritton and found the departure sentence imposed by the trial court was not an abuse of discetion. See, e.g., Lerma v. State, 10 F.L.W. 2273 (Fla. 5th DCA Oct. 3, 1985). This is amply supported by the findings of sentencing

judge that petitioner's criminal activity could not be stopped by lengthy terms of probation, community control, or short terms in county jail, and that petitioner had demonstrated an inability to abide by rehabilitative programs or the laws of society, warranting punishment for the protection of society. (A - 3) The maximum term for which petitioner could have been incarcerated was ten years and the prosecutor recommended this sentence. (A - 3) The sentencing judge disregarded this recommendation and imposed a total of eight years. As in Lerma, supra, reasonable judges could impose different sentences, including the one imposed in this case. Therefor, it cannot be said that the sentencing judge abused his discretion and the Fifth District Court of Appeal properly affirmed petitioner's sentence. Canakaris v. Canakaris, 382 So.2d 1197 (Fla. 1980).

CONCLUSION

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

Respectfully submitted,

JIM SMITH
ATTORNEY GENERAL

KEVIN KITPATRICK CARSON
ASSISTANT ATTORNEY GENERAL
125 N. Ridgewood Avenue
Fourth Floor
Daytona Beach, Florida 32014
(904) 252-1067

COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing respondent's brief on jurisdiction has been furnished by mail to: James R. Wulchak, Chief, Appellate Division, Assistant Public Defender, 112 Orange Avenue, Suite A, Daytona Beach, Florida 32014 on this 21 day of October, 1985.

KEVIN KITPATRICK CARSON
OF COUNSEL