

IN THE SUPREME COURT OF FLORIDA

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CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

DEBORAH ANN ADAMS,)
)
 Petitioner,)
)
 vs.)
)
 STATE OF FLORIDA,)
)
 Respondent.)
 _____)

CASE NO. 67,705

PETITIONER'S BRIEF ON JURISDICTION

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

JAMES R. WULCHAK
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TABLE OF CITATIONS

CASES CITED:

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Albritton v. State
10 FLW 426 (Fla. August 29, 1985)

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Albritton v. State
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Jollie v. State
405 So.2d 418 (Fla. 1981)

4

OTHER AUTHORITIES:

Article V, Section (3)(b)(3), Florida Constitution

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 Petitioner,)
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STATE OF FLORIDA,)
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STATEMENT OF THE CASE AND FACTS

By information filed February 19, 1979, the defendant was charged with the offenses of forgery and uttering a forgery. (R67,68; Appendix A) She pleaded guilty to both offenses and was placed on supervised probation. (R70; Appendix B) Following a probation revocation, on December 12, 1983, the defendant was placed on twenty-four months of community control. (R70; Appendix B)

On October 26, 1984, the defendant's supervisor filed an affidavit alleging violations of community control conditions 1, 5, 8, 10, and 13, by failing to submit truthful monthly reports, by violating laws, by failing to telephone her supervisor on a daily basis as instructed, by failing to

perform fifty hours of public service work, and by failing to maintain accurate daily accounting of her activities.

(R72-73; Appendix C)

Following a hearing, the court revoked the defendant's community control and departed from the recommended guideline sentence of any nonstate prison sanction by imposing consecutive sentences of four years imprisonment on each count. (R83-85,95-96; Appendices D, E) The court's stated reason for the six-cell departure sentence was that the defendant had previously violated her probation. (R95; Appendix E)

On appeal to the District Court of Appeal, Fifth District, the defendant argued that the length of departure was unreasonable. The district court refused to address this issue, rendering the following opinion:

PER CURIAM.

AFFIRMED on the authority of Whitlock v. State, 458 So.2d 888 (Fla. 5th DCA 1984); Albritton v. State, 458 So.2d 320 (Fla. 5th DCA 1984).

(Appendix F)

A notice to invoke discretionary jurisdiction, based on express and direct conflict (the decision cited by the district court is pending before this Court) was filed on September 24, 1985. This brief follows.

SUMMARY OF ARGUMENT

Inasmuch as the instant opinion affirms the defendant's sentences on the basis of Albritton v. State, 458 So.2d 320 (Fla. 5th DCA 1985), which case has been reversed by this Court but is still pending rehearing in this Court, direct and express conflict exists.

ARGUMENT

EXPRESS AND DIRECT CONFLICT
EXISTS FOR THIS COURT TO
REVIEW THE INSTANT CASE
PURSUANT TO ARTICLE V,
SECTION (3) (b) (3), FLORIDA
CONSTITUTION.

The Fifth District affirmed the petitioner's sentences on the authority of Albritton v. State, 458 So.2d 320 (Fla. 5th DCA 1985). This Court on August 29, 1984, issued an opinion reversing the district court's decision in Albritton, supra. Albritton v. State, 10 FLW 426 (Fla. August 29, 1985). That decision is not yet final as a petition for rehearing is still pending.

A district court of appeal per curiam opinion which cites as controlling authority a decision that is pending review in the Supreme Court of Florida constitutes prima facie express and direct conflict and allows the Court to exercise its discretionary review powers. Jollie v. State, 405 So.2d 418, 420 (Fla. 1981).

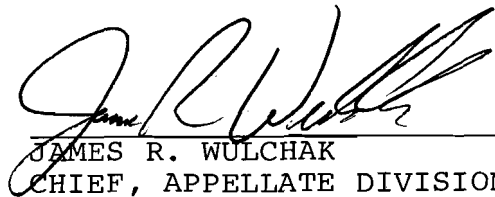
Accordingly, since this Court exercised its discretionary jurisdiction in Albritton, that same jurisdiction should be exercised to resolve the same question of law in the instant case.

CONCLUSION

BASED UPON the argument and authority cited herein, this Court is requested to exercise its jurisdiction, vacate the district court's decision, and remand for further proceedings.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been hand delivered to: The Honorable Jim Smith, Attorney General, 125 N. Ridgewood Ave., Daytona Beach, FL 32014 on this 2nd day of October, 1985.



JAMES R. WULCHAK
CHIEF, APPELLATE DIVISION
ASSISTANT PUBLIC DEFENDER