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IN THE SUPREME COURT OF FLORIDA

CASE NO. 69,948

DON WHITE,

Petitioner,

vs.

THE STATE OF FLORIDA

Respondent,

FILED

SID J. WHITE

MAR 27 1987

CLERK, SUPREME COURT

By _____ Deputy Clerk

ON PETITION FOR DISCRETIONARY REVIEW

BRIEF OF RESPONDENT ON JURISDICTION

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PREFACE

The Petitioner, Don White, was the Appellant in the District Court of Appeal and the Defendant in the trial court. The Respondent, the State of Florida, was the Appellee in the District Court of Appeal and the prosecution in the trial court. In this brief, the parties will be referred to as they appear before the trial court.

The opinion of the District Court of Appeal herein is reported at White v. State, 499 So.2d 14 (Fla. 3d DCA 1986).

I

STATEMENT OF THE CASE

The Defendant's Statement of the Case is Correct.

II

QUESTION PRESENTED

WHETHER THIS COURT SHOULD EXERCISE
ITS DISCRETIONARY JURISDICTION?

III

SUMMARY OF ARGUMENT

There is no conflict stated in the present opinion. However, if this Court modifies the decision in Rowe v. State, 496 So.2d 857 (Fla. 2d DCA 1986), which is presently under review in Supreme Court Case No. 69,606, the required conflict may then exist for jurisdiction in this Court.

IV

ARGUMENT

There is no conflict stated between the decisions cited by the Defendant and the decision in the case at bar. The conflict jurisdiction of the Supreme Court of Florida is limited to those cases in which there is a real and embarassing conflict of opinion and authority on the face of the decisions, of the District Court of Appeal and the Supreme Court. See, Ansin v. Thurston, 101 So.2d 808 (Fla. 1985).

In the present circumstance, the entire content of the present opinion is expressed by the Third District Court of Appeal, thus:

"Affirmed. See, Rowe v. State, 496 So.2d 857 (Fla. 2d DCA 1986); Bell v. State, 453 so.2d 478 (Fla. 2d DCA 1984)."

499 So.2d 14 (Fla. 3d DCA 1986).

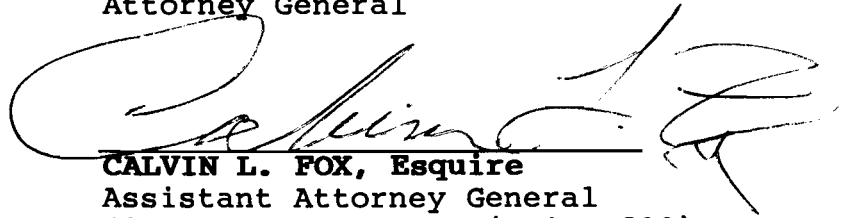
Generally, this Court has no jurisdiction to review said opinion of the Florida Third District Court of Appeal. See, Jenkins v. State, 385 So.2d 1356 (Fla. 1980). However, since this Court has accepted review of Rowe v. State, 496 So.2d 857 (Fla. 2d DCA 1986), in Supreme Court Case No. 69,606 this cause may subsequently be properly accepted for reviewed as to the issue(s) in Rowe.

CONCLUSION

WHEREFORE, upon foregoing, the Respondent, THE STATE OF FLORIDA, submits that the exercise of discretionary jurisdiction may be appropriate herein.

RESPECTFULLY SUBMITTED, on this 25th day of March, 1987,
at Miami, Dade County, Florida.

ROBERT A. BUTTERWORTH
Attorney General

A handwritten signature in cursive script, appearing to read "Calvin L. Fox", is written over a horizontal line. The signature is fluid and extends to the right of the line.

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VI

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing BRIEF OF RESPONDENT ON JURISDICTION was caused to be served by mail upon DON WHITE 500 Orange Avenue Circle, Glades Correctional Institute, Bell Glade, Florida 33430 on this 25th day of March, 1987.

A handwritten signature in cursive script, appearing to read "Calvin L. Fox", written over a horizontal line.

CALVIN L. FOX, Esquire
Assistant Attorney General

/dmc