

IN THE SUPREME COURT OF FLORIDA

**FILED**  
SID [unclear]  
MAR 27 1987  
CLERK, SUPREME COURT  
By \_\_\_\_\_  
Deputy Clerk

TYRONE E. McDANIEL,

Petitioner,

v.

Case No. 70,188

STATE OF FLORIDA,

Respondent.

DISCRETIONARY REVIEW OF DECISION OF THE  
DISTRICT COURT OF APPEAL, SECOND DISTRICT OF FLORIDA

BRIEF OF RESPONDENT ON JURISDICTION

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SUMMARY OF ARGUMENT

Respondent concedes that the decision of the lower court conflicts with Franklin v. State, 346 So.2d 137 (Fla. 1 DCA 1977).

ARGUMENT

ISSUE

THE COURT HAS JURISDICTION BECAUSE THE DECISION ON PETITIONER'S APPEAL EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF ANOTHER DISTRICT COURT OF APPEAL IN FRANKLIN V. STATE, 346 So.2d 137 (Fla. 1st DCA 1977).

Respondent concedes that in the instant case the lower court stated that its holding was in conflict with Franklin v. State, 346 So.2d 137 (Fla. 1st DCA 1977). Moreover, that in State v. McGee, 494 So.2d 255 (Fla. 2 DCA 1986), the lower court conceded conflict with Franklin and certified the question to this court. The McGee case is now before this court, briefs have been filed and the question is awaiting court decision. Should this court grant discretionary review, it is requested that it be consolidated with McGee v. State, Case No 63,340, and the state's brief in that case be considered adopted in this case.

CONCLUSION

The Respondent concedes that this cause is subject to discretionary review by this court.

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: A. N. Radabaugh, Assistant Public Defender, Post Office Box 1640, Bartow, Florida, 33830, on this 25<sup>th</sup> day of March, 1987.



OF COUNSEL FOR RESPONDENT