

IN THE SUPREME COURT OF FLORIDA

CASE NO. 70 392

FILED

THE STATE OF FLORIDA,

SID J. WHITE

Petitioner,

APR 23 1987

CLERK, SUPREME COURT

vs.

By Deputy Clerk

CARLOS RODRIGUEZ,

Respondent.

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ON APPLICATION FOR DISCRETIONARY REVIEW

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BRIEF OF PETITIONER ON JURISDICTION

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TABLE OF CONTENTS

|  | <u>Page</u> |
|--|-------------|
| INTRODUCTION.....  | 1           |
| STATEMENT OF THE CASE AND FACTS.....   | 2-3         |
| QUESTION PRESENTED.....  | 4           |
| SUMMARY OF THE ARGUMENT.....   | 5           |
| <br>ARGUMENT   |             |
| THE DECISION OF THE THIRD DISTRICT<br>COURT OF APPEAL IN THIS CASE EXPRESSLY<br>AND DIRECTLY CONFLICTS WITH THE DECISION<br>OF THIS COURT IN <u>SCOTT V. STATE,</u><br>464 So.2d 1171 (FLA. 1985)..... | 6-7         |
| CONCLUSION.....  | 8           |
| CERTIFICATE OF SERVICE.....  | 8           |

TABLE OF CITATIONS

| <u>Cases</u>                                       | <u>Page</u> |
|--|-------------|
| Scott v. State,<br>464 So.2d 1171 (Fla. 1985)..... | 4,5,6,7     |

OTHER AUTHORITIES

|                                |         |
|--------------------------------|---------|
| Rule 3.850, Fla.R.Crim.P. .... | 8       |
| Rule 3.190 (C)(4).....         | 2,5,6,7 |

## INTRODUCTION

Petitioner was the prosecution in the trial court and appellant in the District Court of Appeal. Respondent was the defendant in the trial court and appellee in the District Court of Appeal.

## STATEMENT OF THE CASE AND FACTS

Respondent was charged with various crimes in the trial court. He filed a Sworn Motion to Dismiss, and the Petitioner moved to strike that motion, alleging that the jurat failed to expose the respondent to the penalties of perjury. The jurat stated that "the facts contained in the foregoing Motion to Dismiss are true and correct to the best of his knowledge." (emphasis supplied). It was and always has been petitioner's position that the words "to the best of his knowledge" were qualifying words which served to preclude any possible perjury prosecution.

The trial court denied the petitioner's motion to strike, and eventually granted the Sworn Motion (after determining that the Traverse was not timely filed).

Petitioner took the case to the Third District Court of Appeal, which affirmed. The Court stated:

The state appeals from a non-final order granting the defendant's sworn motion to dismiss under Fla.R.Crim.P. 3.190(c)(4) and denying the State's motion to strike the defendant's motion. It is the State's contention that the motion to dismiss should have been stricken as procedurally defective because the jurat contained in the motion failed to expose the defendant to the penalties of perjury. We cannot agree." (See enclosed opinion).

The opinion also quotes the language of the jurat, as mentioned in paragraph one.

Notice of invocation of this Court's discretionary jurisdiction to review the decision was filed on April 16, 1987.

QUESTION PRESENTED

WHETHER THE DECISION OF THE THIRD DISTRICT COURT OF APPEAL IN THIS CASE EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF THIS COURT IN SCOTT V. STATE, 464 So.2d 1171 (FLA. 1985)

### SUMMARY OF THE ARGUMENT

The Third District specifically held an oath containing the words "to the best of his knowledge" to be an oath which exposes the swearer to the penalties of perjury. This Court has considered the exact same question in Scott v. State, 464 So.2d 1171 (Fla. 1985), and a diametrically opposed result was reached. The Third District failed to follow the clear precedent established by this Court. That was error. This Court should now exercise jurisdiction in order to have its own precedent respected.

## ARGUMENT

THE DECISION OF THE THIRD DISTRICT COURT OF APPEAL IN THIS CASE EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF THIS COURT IN SCOTT V. STATE, 464 So.2d 1171 (Fla. 1985).

This Court's jurisdiction to review decisions of the District Court is invoked when a District Court announces a rule of law which is in conflict with a rule previously announced by this Court.

In the case at bar, the Third District Court of Appeal announced a rule of law which conflicts with this Court's holding in Scott v. State, 464 So.2d 1171 (Fla. 1985). Accordingly, this Court's exercise of its discretionary jurisdiction to review the decision in question is warranted.

In the instant case, the respondent filed a Sworn Motion to Dismiss, a "(C)(4)" motion. The petitioner moved to strike that motion. It was argued that the jurat employed by respondent failed to expose him to the penalties of perjury. Respondent qualified his oath by using the words "to the best of is knowledge" in said oath.

The trial court rejected the petitioner's argument, as did the Third District Court of Appeal. This was in spite of the fact that Petitioner argued this Court's Scott holding as



controlling precedent in its appeal to the Third District.

In Scott, the defendant filed a motion for postconviction relief. His oath stated that "the allegations and statements contained therein are true and correct to the best of his knowledge."

The trial court held that "to the best of his knowledge" was qualifying language that rendered the motion defective as not being properly sworn to. This Court affirmed.

The trial court correctly held that Scott's verification as not an oath as contemplated by rule 3.850 because of the qualifying language contained therein. Using this qualifying language, a defendant could file a motion for postconviction relief based upon a false allegation of fact without fear of conviction for perjury. If the allegation proved to be false, the defendant would be able to simply respond that his verification of the false allegation had been "to the best of his knowledge" and that he did not know that the allegation was false. We require more than that. The defendant must be able to affirmatively say that his allegation is true and correct."

464 So.2d at 1172.

It must be emphatically pointed out that the Third District's holding cannot be construed as applying only to (C)(4) motions any more than this Court's holding in Scott can be limited to just Rule 3.850 motions. The issue involved here is whether or not the words "to the best of his

knowledge" serve to foreclose a prosecution for perjury when a person uses those words in any motion which must be sworn to. The oath requirement for (C)(4) and a Rule 3.850 motions is identical. To say that one may employ different oaths to each motion is clearly wrong. The elements of perjury must apply to both situations equally.

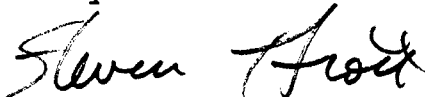
The Third District has a view of what constitutes a valid oath, and that view is contrary to the one expressed by this Court. This Court should exercise its jurisdiction over this case. A failure to do so would allow a District Court of Appeal to ignore the law this Court has promulgated.

CONCLUSION

Based on the foregoing, petitioner requests that this Court exercise its jurisdiction to review the decision of the Third District Court of Appeal.

Respectfully submitted,

ROBERT A. BUTTERWORTH  
Attorney General

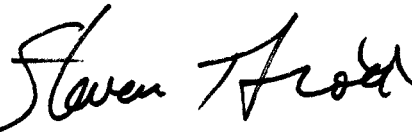


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing BRIEF OF PETITIONER ON JURISDICTION was furnished by mail to MICHAEL S. HACKER, 14 N. E. 1st Avenue, 1400 Ainsley Building, Miami, Florida 33132 on this 21<sup>st</sup> day of April, 1987.



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STEVEN T. SCOTT  
Assistant Attorney General

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