

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,
Petitioner


v.

CASE NO. 70,670

HOWARD MARK SACHS,
Respondent.

JUN 12 1987

CLERK, SUPREME COURT

By  Deputy Clerk

ON APPEAL FROM THE CIRCUIT COURT
IN AND FOR PINELLAS COUNTY
STATE OF FLORIDA

PETITIONER'S BRIEF ON JURISDICTION

**ROBERT A. BUTTERWORTH
ATTORNEY GENERAL**

**JOSEPH R. BRYANT
Assistant Attorney General
1313 Tampa Street, Suite 804
Park Trammell Building
Tampa, Florida 33602**

OF COUNSEL FOR PETITIONER

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PRELIMINARY STATEMENT

HOWARD MARK SACHS will be referred to as the "Respondent" in this brief. The STATE OF FLORIDA will be referred to as the "Petitioner". The record on appeal will be referred to by the symbol "R" followed by the appropriate page number.

STATEMENT OF THE CASE AND FACTS

On May 21, 1985, Respondent was charged by information with two (2) counts of DUI/Manslaughter as against §316.1931(2), Fla. Stat. (1985).

On May 27, 1986, the trial court accepted Respondent's plea of nolo contendere, adjudicated Respondent guilty on both counts and sentenced him to four (4) years community control. The recommended range of the sentencing guidelines called for a sentence of three to seven years imprisonment in state penitentiary.

Petitioner sought review of the sentence and asserted that the trial court failed to utilize clear and convincing reasons in departing from the guidelines. On May 15, 1987, the Second District Court of Appeal entered its opinion affirming the sentence, and from that opinion Petitioner seeks review.

SUMMARY OF THE ARGUMENT

The opinion of the Second District Court of Appeal, in the instant case, expressly and directly conflicts with decisions of other District Courts of Appeal on the same question of law; thus, vesting this Court with jurisdiction pursuant to **Article V, (3) (b) (3), Fla. Const.**

ARGUMENT

ISSUE I

WHETHER THE INSTANT DECISION OF THE SECOND DISTRICT COURT OF APPEAL EXPRESSLY AND DIRECTLY CONFLICTS WITH DECISIONS OF OTHER DISTRICT COURTS OF APPEAL THEREBY VESTING THIS COURT WITH DISCRETIONARY JURISDICTION PURSUANT TO ARTICLE V, §3(b)(3), OF THE FLORIDA CONSTITUTION.

Petitioner contends that the instant decision of the Second District Court of Appeal expressly and directly conflicts with decisions of the other District Courts of Appeal on the issue of whether a trial court may base a downward departure from the sentencing guidelines upon a defendant's lack of prior criminal record.

In the instant case, the Second District answered the above-stated question in the affirmative. The Third, Fourth and Fifth Districts, however, have answered the same question in the negative. See, State v. Holcomb, 481 So.2d 1263 (Fla. 3d DCA 1986); State v. Sanders, 11 F.L.W. 1783 (Fla. 4th DCA Aug 13, 1986), State v. Taylor, 482 So.2d 578 (Fla. 5th DCA 1986). In so holding, the Second District Court of Appeal recognized that its decision conflicts with those of her sister courts.

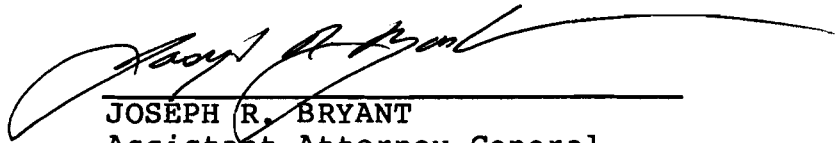
In that conflict does exist, Petitioner prays this Honorable Court to exercise jurisdiction over the instant case pursuant to **Article V, §3(b)(3), Fla. Const.**

CONCLUSION

Based on the foregoing argument and authority, Petitioner prays this Honorable Court to exercise jurisdiction over the above-styled cause.

Respectfully submitted,

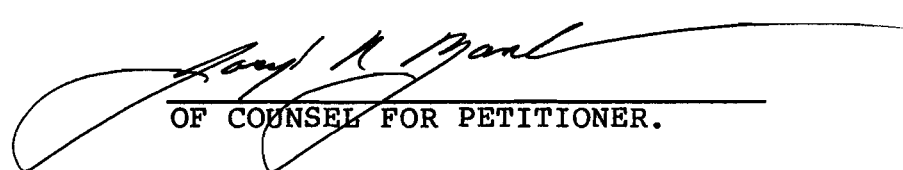
ROBERT A. BUTTERWORTH
ATTORNEY GENERAL



JOSEPH R. BRYANT
Assistant Attorney General
1313 Tampa Street, Suite 804
Park Trammell Building
Tampa, Florida 33602
(813) 272-2670

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Regular Mail to H Michael Evans, Esq. MOSELY & EVANS, P.A., 2123 N.E. Coachman Road, Suite B, Clearwater, Florida 33575, this 10th day of June, 1987.



OF COUNSEL FOR PETITIONER.