

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,)
)
 Petitioner,)
)
 vs.)
)
 TIMOTHY LEE JOHNSON,)
)
 Respondent.)
 _____)

CASE NO. 71,193

5
1987 C
jpl

RESPONDENT'S JURISDICTIONAL BRIEF

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

BRYNN NEWTON
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CASES CITED:

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SUMMARY OF ISSUE

Because the instant decision specifically acknowledges its conflict with another District Court of Appeal decision, and because the issue in this cause is identical to that involved in two other cases certified to be in conflict with other opinions on the same question of law, acceptance of jurisdiction by this Honorable Court appears to be appropriate.

ISSUE

WHETHER THE DISTRICT COURT'S DECISION EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION IN FRANCIS v. STATE, 487 So.2d 348 (Fla. 2d DCA), review denied, 492 So.2d 1332 (Fla. 1986).

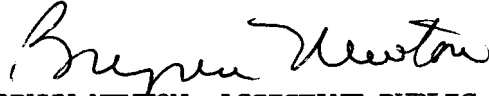
Respondent recognizes that the District Court in this cause has directly expressed conflict between the instant case and Francis v. State, 487 So.2d 348 (Fla. 2d DCA), review denied, 492 So.2d 1332 (Fla. 1986), and that conflict has been certified by the Fifth District Court of Appeal to exist between Francis, supra, and other decisions on the identical issue of whether a trial court is precluded from sentencing a defendant to community control and incarceration in excess of a total of thirty months under the second cell of the sentencing guidelines. See, Vankooten v. State, 12 F.L.W. 2121 (Fla. 5th DCA September 3, 1987), and Avera v. State, 12 F.L.W. 2127 (Fla. 5th DCA September 3, 1987). Respondent further recognizes prudence in this Honorable Court's accepting jurisdiction of this cause inasmuch as it has done so in Vankooten, supra, and Avera, supra.

CONCLUSION

For the reasons expressed herein, Respondent acknowledges that conflict between decisions of District Courts of Appeal has been expressed in the instant case, and that acceptance of discretionary jurisdiction of this cause by this Honorable Court is not inappropriate.

Respectfully submitted,


JAMES B. GIBSON, PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to the Honorable Robert A. Butterworth, Attorney General, 125 N. Ridgewood Avenue, Daytona Beach, Florida 32014, by delivery to his basket at the Fifth District Court of Appeal, 300 S. Beach Street, Daytona Beach, Florida 32014, this 22nd day of October, 1987.



ATTORNEY