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SUMMARY OF THE ARGUMENT

In its opinion below, Cusic v. State, ___ So.2d ___, 12 F.L.W. 2225 (Fla. 2d DCA, Opinion filed September 11, 1987), the Second District Court acknowledged that its decision was in conflict with Hall v. State, 12 F.L.W. 1901 (Fla. 1st DCA August 5, 1987), Accordingly, this court's discretionary jurisdiction is properly invoked.

ISSUE

ARGUMENT

THE OPINION OF THE SECOND DISTRICT COURT OF APPEAL IN CUSIC V. STATE IS IN EXPRESS AND DIRECT CONFLICT WITH THE DECISION OF THE FIRST DISTRICT COURT OF APPEAL IN HALL V. STATE

In Cusic v. State, 12 F.L.W. 2225 (Fla. 2d DCA, Opinion filed September 11, 1987), the Second District Court affirmed the denial of the Petitioner's Motion for Post-Conviction Relief on the authority of McCuiston v. State, 507 So.2d 1185 (Fla. 2d DCA 1987); and, in so doing, the Second District acknowledged conflict with Hall v. State, 12 F.L.W. 1901 (Fla. 1st DCA August 5, 1987) [511 So.2d 1038]. Both McCuiston and Hall are currently pending before this Honorable Court. McCuiston v. State, Fla. S.Ct. #70,706 (Oral argument scheduled January 7, 1988) and State v. Hall, Fla. S.Ct. #70,078. Accordingly, Petitioner has properly invoked this Court's discretionary jurisdiction.

CONCLUSION

Based on the foregoing facts argument and authorities, this court's discretionary jurisdiction is properly invoked.

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 Greg Edward Cusic #226410, Apalachee Correctional Institute, P. O. Box 699W N-45, Sneads, Florida 32460 this 13th day of November, 1987.

K. Blanco

OF COUNSEL FOR RESPONDENT