

IN THE SUPREME COURT OF FLORIDA

CARVEL HOLLOMAN,)
)
 Petitioner,)
)
 vs.)
)
 STATE OF FLORIDA,)
)
 Respondent.)
 _____)

CASE NO. _____
(DCA #4-86-2583)

PETITIONER'S BRIEF ON JURISDICTION

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TABLE OF CONTENTS

	<u>PAGE</u>
Table of Contents	i
Authorities Cited	ii
Statement of the Case and Facts	1
Summary of Argument	2
Argument	3-4
 THIS COURT HAS JURISDICTION TO REVIEW THE DECISION IN PETITIONER'S CASE BECAUSE THE DISTRICT COURT CITED AS CONTROLLING AUTHORITY A DECISION THAT IS NOW PENDING REVIEW IN THIS COURT. 	
Conclusion	5
Certificate of Service	5

AUTHORITIES CITED

<u>CASES</u>	<u>PAGE</u>
<u>Albury v. State</u> , 503 So.2d 460 (Fla. 3d DCA 1987)	3
<u>Deliford v. State</u> , 505 So.2d 523 (Fla. 3d DCA 1987)	3
<u>Holloman v. State</u> , Case No. 4-86-2583 (decided September 2, 1987)	1,2
<u>Jollie v. State</u> , 405 So.2d 418 (Fla. 1981)	3
<u>Morganti v. State</u> , 12 F.L.W. 1960 (Fla. 4th DCA August 12, 1987)	1,2,3,4
<u>State v. Brown</u> , 475 So.2d 1 (Fla. 1985)	3
<u>Whitehead v. State</u> , 498 So.3d 863 (Fla. 1986)	1,3

OTHER AUTHORITIES

Constitutional Provisions

Art. V, § 3(b)(3) and (4), Florida Constitution	2
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STATEMENT OF THE CASE AND FACTS

The Circuit Court of the Fifteenth Judicial Circuit of Florida sentenced petitioner, CARVEL HOLLOMAN, in excess of the guidelines recommended range as a habitual felony offender. On his appeal to the District Court of Appeal, Fourth District, the court reversed on the authority of Whitehead v. State, 498 So.2d 863 (Fla. 1986). Holloman v. State, Case No. 4-86-2583 (September 2, 1987) (Appendix-1).

The decision in Holloman v. State, cited as controlling authority Morganti v. State, No. 87-0312 (Fla. 4th DCA August 12, 1987) (12 F.L.W. 1960). Morganti v. State, contains a certified question of great public importance as well as the district court's acknowledgment that the decision conflicts with another decision from the Third District Court of Appeal.

Petitioner Holloman timely filed his notice to invoke the discretionary review jurisdiction of this Court. This brief on jurisdiction follows.

SUMMARY OF ARGUMENT

The decision of the district court in Holloman v. State was a per curiam opinion which cited as controlling authority a decision, Morganti v. State, that it is now pending review before this Court in Case No. 71,126. Morganti v. State, 12 F.L.W. 1960 (Fla. 4th DCA August 12, 1987) (Appendix-2-3), certifies to this Court a question of great public importance and also acknowledges that the decision in that case expressly and directly conflicts with other decisions from the Third District Court of Appeal. Consequently, this Court has jurisdiction to review the decision in petitioner's case under Article V, Section 3(b)(3) and (4) of the Florida Constitution.

ARGUMENT

THIS COURT HAS JURISDICTION TO REVIEW THE DECISION IN PETITIONER'S CASE BECAUSE THE DISTRICT COURT CITED AS CONTROLLING AUTHORITY A DECISION THAT IS NOW PENDING REVIEW IN THIS COURT.

In reversing petitioner's habitual offender sentence on the authority of Whitehead v. State, 498 So.2d 863 (Fla. 1986), the district court specifically ruled that the trial court could again depart from the recommended guideline range on resentencing if it found valid reasons for departure, citing Morganti v. State, No. 87-0312 (Fla. 4th DCA August 12, 1987) (12 F.L.W. 1960). (Appendix-2-3). In Morganti v. State, the district court certified to this Court a question of great public importance. Also, in Morganti, the court specifically acknowledged that the decision in that case was contrary to cases in the Third District on the same question of law. Deliford v. State, 505 So.2d 523 (Fla. 3d DCA 1987), Albury v. State, 503 So.2d 460 (Fla. 3d DCA 1987). Morganti v. State, supra (Appendix-3).

Morganti filed for discretionary review on the certified question and is now pending review in this Court under Case No. 71,126.

This Court has jurisdiction to review the decision in petitioner's case because the district court's per curiam opinion cited as controlling authority Morganti v. State, which decision is pending review in this Court. Jollie v. State, 405 So.2d 418 (Fla. 1981), State v. Brown, 475 So.2d 1 (Fla. 1985).

Accordingly, petitioner requests this Court to accept jurisdiction pending review of the decision in Morganti v. State, supra.

CONCLUSION

Based on the foregoing, the district court's citation PCA to Morganti v. State, which is pending review in this Court constitutes a prima facie express conflict and allows this Court to exercise its jurisdiction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of Petitioner's Brief on Jurisdiction was furnished by courier, to DIANE LEEDS, Assistant Attorney General, Elisha Newton Dimick Building, Suite 204, 111 Georgia Avenue, West Palm Beach, Florida 33401, this 13th day of October, 1987.

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