

IN THE SUPREME COURT OF FLORIDA

CARVEL HOLLOMAN,  
Petitioner,

vs.

CASE NO. 71,296 -  
DCA NO. 4-86-2583

STATE OF FLORIDA,  
Respondent.

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RESPONDENT'S BRIEF ON JURISDICTION

Respectfully submitted

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STATEMENT OF THE CASE AND FACTS

The State accepts Petitioner's Statement of the Case and Facts as being substantially true and correct.

SUMMARY OF THE ARGUMENT

Even though discretionary jurisdiction vests in this Court, this Court should not exercise same. The district court properly decided the issue based upon the facts presented by the instant case.

## ARGUMENT

THIS COURT SHOULD NOT EXERCISE ITS  
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

The State recognizes that Morganti v. State, No. 87-0312 (Fla. 4th DCA August 12, 1987) (12 F.L.W. 1960) is currently pending review by this Court and that discretionary jurisdiction therefore vests in this Court to review the instant case where the opinion cited to Morganti, Id., Jollie v. State, 405 So.2d 418 (Fla. 1981). However, as jurisdiction is discretionary it is submitted that the district court properly decided the instant case and jurisdiction should not be exercised. On Motion for Rehearing the State argued that remand for potential guideline departure was appropriate (See attached Motion for Rehearing). The basis of said motion was a letter received from the trial court judge who specifically requested the opportunity to depart from the guidelines because of the "particularly cruel crime" which was committed by a "particularly dangerous defendant." Details were included in said letter. (See letter from trial court judge attached to Motion for Rehearing). As such, under the facts of the instant case, the district court properly authorized the trial court to depart from the guidelines upon remand. Review must be denied.

In the alternative, should discretionary review be granted, it is requested that the instant case be held in abeyance by this Court until Morganti, Id. is decided. At that time this Court can then rule appropriately as to the validity of the district court's order.

CONCLUSION

Based upon the foregoing argument and citations of authority, it is respectfully requested that the instant petition for discretionary review be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing "Respondent's Brief on Jurisdiction" has been forwarded to Ms. Margaret Good, Assistant Public Defender, 15th Judicial Circuit, 9th Floor, 301 North Olive Avenue, West Palm Beach, FL 33401, by courier mail this 3 day of November, 1987.



Diane E. Leeds  
Assistant Attorney General