

IN THE SUPREME COURT OF FLORIDA

JOHN THOR WHITE,

Petitioner,

vs.

Case No. 72,170

PINELLAS COUNTY, a political
subdivision of the State of
Florida,

FILED
SID WHITE

Respondent.

APR 21 1988

CLERK, SUPREME COURT

By _____
Deputy Clerk

RESPONDENT'S JURISDICTIONAL BRIEF

ON APPEAL FROM THE
SECOND DISTRICT COURT OF APPEAL

JOHN E. SCHAEFER
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Clearwater, FL 34616
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Attorney for Respondent

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SUMMARY OF ARGUMENT

The appellate court's majority decision in the instant case does not provide any basis for this Court to find conflict with Makemson v. Martin County, 491 So.2d 1109 (Fla. 1986), cert denied, _____ U.S. _____, 107 S. Ct. 908, 93 L. Ed. 2d 857 (1987). Conflict must appear within the four corners of the majority decision which does not exist here. Accordingly, this Court should deny jurisdiction in this cause.

ARGUMENT

PETITIONER FAILS TO SHOW THAT THE INSTANT CASE EXPRESSLY AND DIRECTLY CONFLICTS WITH THE FLORIDA SUPREME COURT DECISION IN MAKEMSON v. MARTIN COUNTY, 491 So. 2d 1109 (Fla. 1986), cert. denied, _____ U.S. _____, 107 S. Ct. 908, 93 L. Ed. 2d 857 (1987).

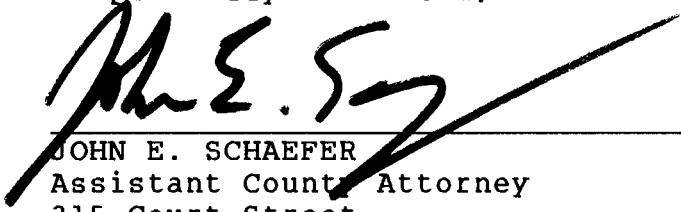
Pursuant to Rule 9.030(a)(2)(A)(iv), Fla. R. App. P., Petitioner must show that the appellate court's opinion expressly and directly conflicts with this Court's decision in Makemson v. Martin County, 491 So.2d 1109 (Fla. 1986), cert. denied, _____ U.S. _____, 107 S. Ct. 908, 93 L. Ed. 2d 857 (1987). Petitioner has simply not met that burden.

It is well settled that any conflict must appear within the four corners of the majority decision. Neither a dissenting opinion nor the record below can be used to establish jurisdiction. Reaves v. State, 485 So.2d 829 (Fla. 1986). The two paragraphs of the majority opinion of the Second District Court of Appeal do not provide any such basis for discretionary appeal. The majority decision merely notes that the trial court relied on Makemson and holds that the trial court did not depart from the essential requirements of law. Accordingly, the Second District Court of Appeal denied certiorari. The appellate court did not articulate its reasons nor interpret the holding in Makemson. Petitioner would have this Court accept the dissenter's view of the case or review the record itself. This is clearly impermissible. Reaves v. State, supra.

CONCLUSION

Petitioner failed to show that the appellate court's opinion expressly and directly conflicts with a decision of another district court of appeal or of the Supreme Court on the same question of law. Respondent, therefore, respectfully prays that this Court deny jurisdiction in this cause.

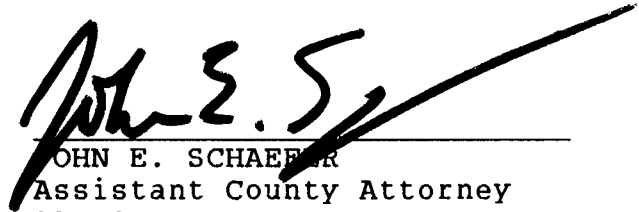
Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail to JOHN THOR WHITE, ESQ., P.O. Box 10096, St. Petersburg, FL 33733 this 19th day of April, 1988.



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