

IN THE SUPREME COURT OF FLORIDA

**FILED**  
SID J. WHITE  
DEC 5 1988  
CLERK, SUPREME COURT  
Clerk

JUNIOR McPHERSON, )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 STATE OF FLORIDA, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

CASE NO: 73,295

RESPONDENT'S BRIEF ON JURISDICTION

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STATEMENT OF THE CASE AND FACTS

Respondent accepts Petitioner's Statement of the Case and facts as found on page one (1) of his brief on jurisdiction.

SUMMARY OF THE ARGUMENT

The decision of the district court in McPherson v. State cites as controlling authority a decision that is pending review in this Court in Case No. 73,289. That case certified a question of great public importance. State v. Avery, 13 F.L.W. 1816 (Fla. 4th DCA August 3, 1988). This Court has jurisdiction to review this case under Article V, Section 3(b)(4) of the Florida Constitution.

ARGUMENT

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

Respondent agrees with Petitioner that jurisdiction properly lies in this Court since the District Court cited as controlling authority a case which is pending review in this Court. Jollie v. State, 405 So.2d 418 (Fla. 1981).

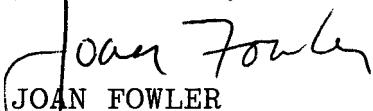
Respondent asserts however that in the interest of judicial economy this case should travel with Avery v. State, Case No. 73,289. The District Court has already determined that the fact situation sub judice falls within the ambit of State v. Avery, supra. Accordingly, no merit briefs need to be filed in the instant case as the merit briefs in Avery v. State will control the result of review in this case.

CONCLUSION

Wherefore, Respondent respectfully requests that this Court accept jurisdiction in this case, consolidate this case with Avery v. State, Case No. 73,289, and allow the merits briefs in Avery v. State to be considered as the merits briefs in the instant case.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy hereof has been furnished by courier to Margaret Good, Assistant Public Defender, 9th Floor, Governmental Center, 301 N. Olive Avenue, West Palm Beach, Florida 33401, this 2nd day of December, 1988.

  
\_\_\_\_\_  
Of Counsel