

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,  
Petitioner,

v.

CHARLES E, McCRAY,  
Respondent

Case. No. 74,315

JUL 8 1974  
CLERK SUPREME COURT  
BY [Signature]  
Deputy Clerk

ON APPEAL FROM THE SECOND DISTRICT COURT OF APPEAL  
STATE OF FLORIDA

JURISDICTIONAL BRIEF OF THE PETITIONER

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STATEMENT OF THE CASE AND FACTS

The opinion of the second district, attached, outlines the relevant facts at this stage of the proceedings. On the merits of the appeal, never reached below, the state was attacking a downward departure for rehabilitative reasons. The state filed a brief on the merits, but respondent filed a motion to dismiss appeal. The state responded to the motion, distinguishing the instant case, where the judgment was filed more than 15 days prior to the notice of appeal, but timely as to the filing of the actual operative sentencing documents. The state further requested that the court recognize conflict with State v. Williams, 463 So.2d 525 (Fla. 3d DCA 1985), if it found the "operative documents" distinction insufficient to distinguish State v. Ealy, 533 So.2d 1173 (Fla. 2d DCA 1988). Ealy provides that the appeal must be filed within "fifteen days from the filing of the sentencing order." Id. at 1174.

## SUMMARY OF THE ARGUMENT

Conflict is recognized in the opinion below, consistent with the same conflict recognized in Hieber. Hieber is pending sub judice.

## ARGUMENT

ISSUE

CONFLICT EXISTS

The decision below recognizes the same conflict with State v. Williams, 463 So.2d 525 (Fla. 3d DCA 1985), as previously recognized in State v. Eals, 533 So.2d 1173 (Fla. 2d DCA 1988), and State v. Hieber, 541 So.2d 1208 (Fla. 2d DCA 1988), pending on discretionary jurisdiction, No. 73, 531 (Fla., state's brief on the merits filed, answer brief pending). While the state did not pursue review in this court in Eals, Hieber is pending on the merits before this court. This court traditionally takes cases in this posture and should do so here because conflict does exist, and because the same issue is pending in another case.

## CONCLUSION

Jurisdiction is possible and discretion should be exercised to take jurisdiction.

Respectfully submitted,

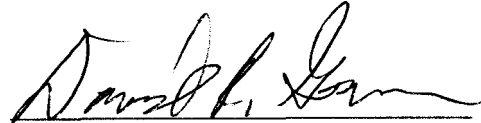
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Paul Helm, Assistant Public Defender, Public Defender's Office, Polk County Courthouse, P.O. Box 9000--Drawer PD, Bartow, Florida 33830, this date, June 26, 1989.



OF COUNSEL FOR PETITIONER