

IN THE SUPREME COURT OF FLORIDA

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CLERK SUPREME COURT  
By \_\_\_\_\_  
Deputy Clerk

VINCENT NELSON,  
Petitioner,  
vs.  
STATE OF FLORIDA,  
Respondent.

Case No: 74,421

RESPONDENT'S BRIEF ON JURISDICTION

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PRELIMINARY STATEMENT

Petitioner was the Defendant in the Criminal Division of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida and the Appellant in the District Court of Appeal, Fourth District. Respondent was the prosecution and Appellee in the lower courts. In this brief, the parties will be referred to as they appear before this Court.

The symbol "R" will denote record on appeal.

STATEMENT OF THE CASE AND FACTS

Respondent generally accepts Petitioner's Statement of the Case and Facts as found on pages two through three in its Brief.

SUMMARY OF ARGUMENT

This Court should not exercise its discretionary jurisdiction in this cause. The mandate was issued by the Fourth District on July 14, 1989 (See Appendix). Thus, this cause is moot. Further, the decision of the district court in Nelson v. State does not conflict with the decision of other districts or this Court on the same question of law. Accordingly, this Court has no basis for exercising its discretionary jurisdiction under Article V, Section (b)(4) of the Florida Constitution.

### ARGUMENT

THIS COURT DOES NOT HAVE  
JURISDICTION TO REVIEW THE  
DECISION IN PETITIONER'S CASE.

This court should not exercise its discretionary jurisdiction in this matter. The Petitioner has not complied with the rules of appellate procedure and has not established conflict jurisdiction.

First, the Respondent filed a good faith Motion to Strike Petitioner's Brief for nonconformity with the rules. Because of the forthrightness of the Respondent in filing said motion, rather than framing the argument in its jurisdiction brief, Petitioner was alerted to the deficiencies of its brief. As a result, Petitioner has filed an amended jurisdiction brief as a second effort to satisfy the appellate rules. However, Petitioner should not be afforded a second chance and benefit from its errors and jurisdiction should be denied.

Second, it is well-settled that the judgment of an appellate court, where it issues a mandate, is a final judgment. Thibodeau v. Sarasota Memorial Hospital, 449 So.2d 297 (Fla. 1st DCA 1984). The mandate in the instant case was filed on July 14, 1989 without any attempt by Petitioner to stay the mandate. Petitioner's effort to secure discretionary review by the Florida Supreme Court should not avoid the finality of an appellate court's judgment, in the absence of a stay ordered by the appellate court. Thibodeau. Therefore, as Petitioner did not obtain a stay in the instant case as indicated by the Mandate, attached, review should be denied. Petitioner cannot attempt to

invoke the jurisdiction of this Court by ignoring the spirit of the appellate rules.

Notwithstanding Petitioner's noncompliance with procedure, this Court should not review this cause since no conflict has been demonstrated. The facts in the instant case are clearly distinguishable from those that Petitioner relies upon in its brief. The holding by the Fourth District Court of Appeals in Nelson v. State, 14 FLW 1542 (Fla. 4th DCA June 28, 1989) applies in the limited circumstance where a thief is driving a stolen car. Petitioner's cases all deal with unlawful seizures of a person in a vehicle where a search follows, resulting in the discovery of drugs or a DUI.

In State v. Jones, 483 So.2d 433 (Fla. 1986) warrantless temporary roadblocks were established to apprehend persons driving while under the influence of alcohol.

In State v. Scoll, 481 So.2d 40 (Fla. 3rd DCA 1985), rev. denied, 492 So.2d 1335 (Fla. 1986) the Petitioner was able to challenge a seizure incident to his own arrest on the grounds that the arrest was illegal.

In State v. Delaney, 517 So.2d 696 (Fla. 2nd DCA 1988) the court stated that passengers had standing to object to an initial stop of an automobile.

However, none of these cases conflict with the Fourth District's ruling in Nelson, since none involve drivers placing themselves in stolen cars.

"If the driver of a stolen car does not have standing to object to a search of the car, then the driver of a stolen car does not