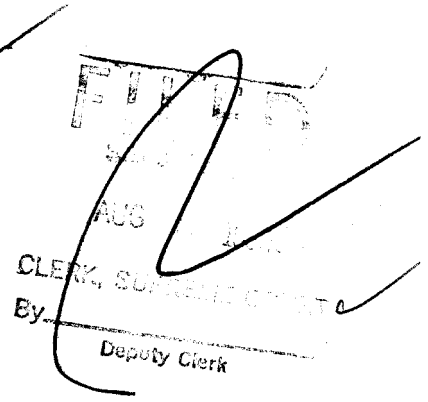
IN THE SUPREME COURT OF FLORIDA



JAMES MCDONALD,

Petitioner,

v.

DCA CASE NO. **88-2907**
SUPREME COURT NO. 74,537

STATE OF FLORIDA,

Respondent.

PETITIONER'S BRIEF ON JURISDICTION

MICHAEL E. ALLEN
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

CARL S. MCGINNES
ASSISTANT PUBLIC DEFENDER
LEON COUNTY COURTHOUSE
FOURTH FLOOR, NORTH
301 SOUTH MONROE STREET
TALLAHASSEE, FLORIDA **32301**
(904) 488-2458

ATTORNEY FOR PETITIONER
FLA. BAR **#230502**

TABLE OF CONTENTS

		PAGE(S)
TABLE OF CONTENTS		i
TABLE OF CITATIONS		ii
I	PRELIMINARY STATEMENT	1
II	STATEMENT OF THE CASE AND FACTS	2
III	SUMMARY OF ARGUMENT	3
IV	ARGUMENT	4
	THE DECISION OF THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, EXPRESSLY AFFECTS A CONSTITUTIONAL OFFICER, PUBLIC DEFENDERS, AND EXPRESSLY AND DIRECTLY CONFLICTS WITH RULES REGULATING AND THE FLORIDA BAR, 494 SO.2D 977 (FLA. 1986) ON THE SAME QUESTION OF LAW.	4
V	CONCLUSION	5
CERTIFICATE OF SERVICE		5
APPENDIX		

TABLE OF CITATIONS

CASES	PAGE(S)
Anders v. California, 386 U.S. 738 (1967)	2
Forrester v. State, 14 F.L.W. 1064 (Fla. 1st DCA April 28, 1989)	2,4
Forrester v. State, Case No. 74,166	4
Jollie v. State, 405 So.2d 418 (Fla. 1981)	4
Smith v. State, 496 So.2d 971 (Fla. 1st DCA 1986)	2

IN THE SUPREME COURT OF FLORIDA

JAMES MCDONALD,

Petitioner,

v. : DCA CASE NO. 88-2907
: SUPREME COURT NO.

STATE OF FLORIDA,

Respondent.

PETITIONER'S BRIEF ON JURISDICTION

I. PRELIMINARY STATEMENT

James McDonald was the defendant in the trial court and will be referred to in this brief as "petitioner," "defendant," or by his proper name. Filed with this brief is an appendix containing a copy of the decision to be reviewed as well as other documents pertinent to the jurisdiction of the Court. Reference to the appendix will be by use of the symbol "A" followed by the appropriate page number in parentheses.

II. STATEMENT OF THE CASE AND FACTS

Petitioner filed an appeal from several sentences imposed by the trial court. The trial court ran the five year mandatory minimum sentence for a trafficking in drugs conviction consecutive to a three year mandatory minimum imposed for use of a firearm in an aggravated assault.

On appeal, the undersigned filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967). By order dated July 6, 1986, the district court, proceeding under its decisions in Smith v. State, 496 So.2d 971 (Fla. 1st DCA 1986) and Forrester v. State, 14 F.L.W. 1064 (Fla. 1st DCA April 28, 1989), required the undersigned to "brief more fully" a statement made in the Anders brief indicating the undersigned's view that no error occurred by making the mandatory minimum sentences consecutive. The order further directed that the undersigned brief why the sentences "might otherwise be affirmable" on a separate ground (A-1-2).

On July 14, 1989, the undersigned filed a motion to appoint new counsel or to stay proceedings (A-3-5), which was denied by order dated August 1, 1989 (A-6).

Notice of invoking this Court's discretionary jurisdiction has been timely filed (A-7).

111. SUMMARY OF ARGUMENT

Since the actual argument is well within the page limitations for a summary of argument, to avoid needless repetition a formal summary of argument will be omitted here.

IV. ARGUMENT

THE DECISION OF THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, EXPRESSLY AFFECTS A CONSTITUTIONAL OFFICER, PUBLIC DEFENDERS, AND EXPRESSLY AND DIRECTLY CONFLICTS WITH RULES REGULATING THE FLORIDA BAR, 494 SO.2D 977 (FLA. 1986) ON THE SAME QUESTION OF LAW.

In the instant case the decision sought to be reviewed was expressly based upon the district court's opinion in Forrester v. State, supra. It should be noted that counsel for Mr. Forrester, upon filing a notice invoking the Court's jurisdiction, filed, on May 12, 1989, a jurisdictional brief. As his jurisdictional arguments, petitioner incorporates by reference as if fully set forth herein the brief on jurisdiction filed in Forrester v. State, Case No. 74,166.

By order dated July 31, 1989, this Court accepted jurisdiction in Forrester. Since Forrester was cited as controlling authority in the instant case, and since jurisdiction has been accepted in Forrester, the Court has jurisdiction over this case pursuant to Jollie v. State, 405 So.2d 418 (Fla. 1981)(a district court decision which cites as controlling authority a decision that is pending review in the Supreme Court constitutes prima facie express conflict and allows the Supreme Court to exercise its jurisdiction).

V. CONCLUSION

Petitioner requests that the Court accept jurisdiction.

Respectfully submitted,

MICHAEL E. ALLEN
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

CARL S. MCGINNES
Assistant Public Defender
Leon County Courthouse
Fourth Floor, North
301 South Monroe Street
Tallahassee, Florida 32301
(904) 488-2458

ATTORNEY FOR PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by hand delivery to James W. Rogers, Assistant Attorney General, The Capitol, Tallahassee, and a copy has been mailed to petitioner JAMES MCDONALD, #058435, Tomoka Correctional Institution, 3950 Tiger Bay Road, Daytona Beach, Florida, 32014, on this 3rd day of August, 1989.

CARL S. MCGINNES