

IN THE SUPREME COURT OF FLORIDA

JAMES KERKLIN,

Respondent,

vs ■

STATE OF FLORIDA,

Petitioner ■

Case No. 74,811

DISCRETIONARY REVIEW OF DECISION OF THE
DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

BRIEF OF RESPONDENT ON JURISDICTION

JAMES MARION MOORMAN
~~PUBLIC DEFENDER~~
TENTH JUDICIAL CIRCUIT
FLORIDA BAR NO. 0143265

ANDREA STEFFEN
ASSISTANT PUBLIC DEFENDER

Public Defender's Office
Polk County Courthouse
P. O. Box 9000 -- Drawer PD
Bartow, FL 33830
(813) 534-4200

ATTORNEYS FOR RESPONDENT

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STATEMENT OF THE CASE AND FACTS

Respondent would accept the Statement of the Case and Facts as submitted by Petitioner.

SUMMARY OF THE ARGUMENT

Counsel acknowledges a basis for jurisdiction exists, but urges the court to refrain from review.

ARGUMENT

ISSUE I

THIS COURT SHOULD EXERCISE ITS DISCRETIONARY JURISDICTION TO REVIEW THE DECISION OF THE SECOND DISTRICT COURT OF APPEALS IN KERKLIN V. STATE, 14 F.L.W. 1639 (FLA. June 16, 1989)

Respondent would concede that a basis exists for this court to exercise its discretionary jurisdiction, yet Respondent urges this court to refrain from doing so.

Respondent respectfully requests this court instead to vacate the stay issued by the Second District Court of Appeals on September 13, 1989. Respondent is confident the decision of the Second District was correct. The stay has kept Mr. Kerklín incarcerated longer than his legal sentence would require. Mr. Kerklín is being irreparably harmed by the stay.

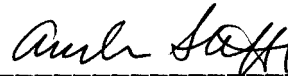
CONCLUSION

Respondent acknowledges a basis for jurisdiction, yet requests this court to decline to accept this case and instead vacate the stay currently in force.

CERTIFICATE OF SERVICE

I certify that a copy has been mailed to Robert Butterworth, Room 804, 1313 Tampa St., Tampa, FL 33602, (813) 272-2670, on this 12 day of October, 1989.

Respectfully submitted,



JAMES MARION MOORMAN
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT
FLORIDA BAR NUMBER 0143265

ANDREA STEFFEN
Assistant Public Defender
P. O. Box 9000 - Drawer PD
Bartow, FL 33830
(813) 534-4200

AS/mlm