

IN THE SUPREME COURT OF FLORIDA

WALLACE BOUDREAU,
Petitioner,

vs .

STATE OF FLORIDA,
Respondent.

Case No. 75163

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AMENDED JURISDICTIONAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

	<u>PAGE NO.</u>
TABLE OF CONTENTS.....	i
TABLE OF CITATIONS.....	ii
PRELIMINARY STATEMENT.....	1
STATEMENT OF THE CASE AND FACTS.....	2
SUMMARY OF THE ARGUMENT.....	3
ARGUMENT	
ISSUE	
WHETHER THE DISTRICT COURT'S HOLDING THAT CONDITIONS OF PROBATION MUST BE OBJECTED TO FOR PRESERVATION OF APPELLATE REVIEW DIRECTLY AND EXPRESSLY CONFLICTS WITH <u>MILLER V. STATE</u> , 407 SO.2D 959 (FLA. 4TH DCA 1981); <u>DIORIO V.</u> <u>STATE</u> , 359 SO.2D 45 (FLA. 2d DCA 1978); AND <u>COULSON V. STATE</u> , 342 SO.2D 1042 (FLA. 4TH DCA 1977), ON THE IDENTICAL POINT OF LAW.....	4
CONCLUSION.....	5
CERTIFICATE OF SERVICE.....	5

TABLE OF CITATIONS

CASES

PAGE NO.

Coulson v. State,
342 So.2d 1042 (Fla. 4th DCA 1977).....4

Diorio v. State,
359 So.2d 45 Fla. 2d DCA 1978).....4

McPike v. State,
473 So.2d 291 (Fla. 2d DCA 1985).....4

Miller v. State,
407 So.2d 959 (Fla. 4th DCA 1981)....3,4

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PRELI STATEMENT

Petitioner, Wallace Boudreaux, was the defendant in the circuit court and the appellant in the district court and will be referred to in this brief as "the petitioner."

The State of Florida was the prosecution in the circuit court and the appellee in the district court. The State of Florida will be referred to herein as "the State."

All references to the district court opinion will be by the use of the symbol "A" followed by the appropriate page number in parentheses.

STATEMENT OF THE CASE AND FACTS

The district court opinion as appended to Petitioner's Brief on Jurisdiction contains the complete statement of the facts in this case. (A 1-4).

SUMMARY OF THE ARGUMENT

The State concedes that there appears to be conflict with the instant case and the holding in Miller v. State, 407 So.2d 959 (Fla. 4th DCA 1981).

ARGUMENT

WHETHER THE DISTRICT COURT'S HOLDING THAT CONDITIONS OF PROBATION MUST BE OBJECTED TO FOR PRESERVATION OF APPELLATE REVIEW DIRECTLY AND EXPRESSLY CONFLICTS WITH MILLER V. STATE, 407 So.2d 959 (Fla. 4th DCA 1981); DIORIO V. STATE, 359 So.2d 45 (Fla. 2d DCA 1978); AND COULSON V. STATE, 342 So.2d 1042 (Fla. 4th DCA 1977), ON THE IDENTICAL POINT OF LAW

The State concedes that the instant case appears to conflict with Miller v. State, supra, and Coulson v. State, supra, on the identical point of law as to whether conditions of probation must be objected to for preservation of appellate review.

Conflict also exists with Diorio v. State, supra. However, the Second District Court of Appeal has since held that a contemporaneous objection must be made to conditions of probation in order to preserve the issue for appellate review. MNcPike v. State, 473 So.2d 291 (Fla. 2d DCA 1985).

CONCLUSION

It appears that conflict does exist between the instant case and two other district court decisions.

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 MICHAEL E. ALLEN, Public Defender, and LAWRENCE M. KORN, Assistant Public Defender, Office of the Public Defender, Second Judicial Circuit of Florida, Leon County Courthouse, Fourth Floor North, 301 South Monroe Street, Tallahassee, Florida 32301, this 8 day of January, 1990.



WILLIAM A. HATCH