

IN THE SUPREME COURT OF FLORIDA

WILLIE FRED POLLARD,

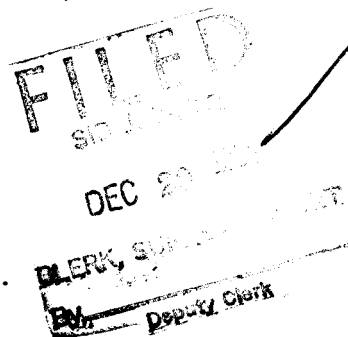
Petitioner,

v.

STATE OF FLORIDA,

Respondent.

1-14-90
N/C
75,223
CASE NO. 88-526
SUPREME COURT NO.



PETITIONER'S BRIEF ON JURISDICTION

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SECOND JUDICIAL CIRCUIT

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_____:

PETITIONER'S BRIEF ON JURISDICTION

I. PRELIMINARY STATEMENT

Willie Fred Pollard was the defendant in the trial court and appellant before the District Court of Appeal, First District. He 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 district court's opinion along with other matters 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.

11. STATEMENT OF THE CASE AND FACTS

The opinion of the district court dated December 19, 1989, has cited as controlling authority the cases of Smith v. State, 430 So.2d 448 (Fla. 1983) and Wheeler v. State, 549 So.2d 687 (Fla. 1st DCA 1989)(A-1).

Notice of invoking the discretionary jurisdiction of the Court has been timely filed (A-2-3).

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

SINCE THE DISTRICT COURT HAS CITED WHEELER V. STATE, 549 SO.2D 687 (FLA. 1ST DCA 1989), A CASE PRESENTLY PENDING BEFORE THIS COURT, AS CONTROLLING AUTHORITY, THIS COURT HAS JURISDICTION.

On December 19, 1989, the district court affirmed petitioner's convictions, citing Smith v. State, 430 So.2d 448 (Fla. 1983) and Wheeler v. State, 549 So.2d 687 (Fla. 1st DCA 1989) as controlling authority.

Wheeler is currently pending before the Court and is assigned Florida Supreme Court #75,076. The district court in Wheeler certified several issues to the Court as involving questions of great public importance, including the issue of whether Smith is still good law in light of State v. Smith, 547 So.2d 613 (Fla. 1989), which approved Gordon v. State, 528 So.2d 910 (Fla. 2d DCA 1988). Wheeler, 549 So.2d at 691-692.

In Jollie v. State, 381 So.2d 351 (Fla. 5th DCA 1980), the fifth district affirmed in an opinion that read simply:

Affirmed. See Murray v. State, 378 So.2d 111 (Fla. 5th DCA 1980).

This Court, in Jollie v. State, 405 So.2d 418 (Fla. 1981), noting that it had previously accepted jurisdiction of Murray, held that, for the purpose of the Court's discretionary jurisdiction, a district court of appeal per curiam decision which cites as controlling authority a decision that is either pending review in or has been reversed by this Court constitutes prima facie conflict and allows the Court to exercise its jurisdiction.

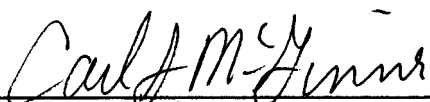
Since Wheeler is presently before the Court, and since Wheeler raises the question of whether Smith v. State has been overruled, and since both Smith and Wheeler were cited a controlling authority in petitioner's case, petitioner asserts the rationale of Jollie as applied to this case leads to no other conclusion but that the Court has jurisdiction.

V. CONCLUSION

Petitioner requests the Court to enter an order accepting jurisdiction and requiring the filing of merit briefs.

Respectfully submitted,

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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, Florida, and a copy has been mailed to Petitioner, WILLIE FRED POLLARD, James I. Montgomery C.I., Route 3, Box 599, Jacksonville, Florida, 32218, on this 20th day of December, 1989.



CARL S. MCGINNES

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