

IN THE SUPREME COURT OF FLORIDA

FILED  
JUN 20 1990  
CLERK OF THE SUPREME COURT  
By \_\_\_\_\_  
Deputy Clerk

BILLY WOODS, et al.,  
Petitioner,

vs.

CASE NO.: 76, 163

STATE OF FLORIDA,  
Respondent.

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PETITIONER'S BRIEF ON JURISDICTION

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STATEMENT OF THE CASE

Petitioners were charged in the county court with a misdemeanor violation of the Florida DUI Law. Section 316.193(1), Fla. Stat. (1987). They filed a pre-trial Motion in Limine relating to the admissibility of the results of their chemical breath test. The county court granted the Motion in Limine and certified a question of great public importance to the Fifth District Court of Appeals pursuant to Fla.R.App.P. 9.160. The state appealed to the Fifth District who initially accepted jurisdiction but later relinquished jurisdiction to the circuit court. The circuit court reversed the county court order. Petitioner then filed a petition for writ of certiorari in the Fifth District Court of Appeal seeking review of the circuit court decision.

The court in Woods v. State, 15 F.L.W. D1351 (Fla. 5th DCA May 25, 1990), declined to grant the writ "for the reasons stated in Williams v. State, 540 So.2d 229 (Fla. 5th DCA 1989), and Baker v. State, 518 So.2d 457 (Fla. 5th DCA 1988)." They further stated "The defendants have an adequate remedy by plenary appeal if the trial court enters a judgment of conviction."

The Fifth District Court of Appeals expressed direct conflict in Williams, supra, with Fieselman v. State, 537 So.2d 603 (Fla. 3d DCA 1988), and Mitchell v. State, 538 So.2d 106 (Fla. 4th DCA 1989).

### SUMMARY OF ARGUMENT

This court has accepted jurisdiction in Williams (Case #73,948) and Fieselman (Case #73,636). The issue presented in the instant case is the same as presented in Williams and Fieselman; specifically, does certiorari jurisdiction lie to review a circuit court order reversing a pretrial county court order?

This court should accept jurisdiction pursuant to the rule of law stated in Jollie v. State, 405 So.2d 418 (Fla. 1981) and State v. Lofton, 534 So.2d 1148 (Fla. 1988). In those cases the Court held "that a per curium decision without opinion of a district court of appeal which cites as controlling authority a decision that is pending review in this Court constitutes prima facie express conflict for purposes of jurisdiction." Lofton at 1149.

Since this Court has accepted jurisdiction in Williams and Fieselman on the same issue as presented in this case this Court should accept jurisdiction pursuant to article V, section 3(b)(3), Florida Constitution.

## ARGUMENT

THIS COURT SHOULD ACCEPT JURISDICTION WHEN THE FIFTH DISTRICT COURT OF APPEAL DENIED A PETITION FOR WRIT OF CERTIORARI CITING AS AUTHORITY A CASE THAT THIS COURT HAS ACCEPTED JURISDICTION ON RELATING TO THE SAME LEGAL ISSUE.

The discretionary jurisdiction of this court may be sought to review a decision of a district court of appeal that expressly and directly conflicts with a decision of another court of appeal or of this court on the same question of law. Fla.R.App.P. 9.030(a)(2)(A)(iv). The Fifth District Court of Appeal expressed direct conflict in Williams v. State, 540 So.2d 229 (Fla. 5th DCA 1989) with Fieselman v. State, 537 So.2d 603 (Fla. 3d DCA 1988) and Mitchell v. State, 538 So.2d 106 (Fla. 4th DCA 1989).

This court has accepted jurisdiction in both Williams (Case #73,948) and Fieselman (Case #73,636).

This court has previously held in Jollie v. State, 405 So.2d 418 (Fla. 1981) and State v. Lofton, 534 So.2d 1148 (Fla. 1988) that prima facia express conflict for purposes of jurisdiction is present when a district court of appeal cites as controlling authority a decision that is pending review in this Court.

That is the situation in the instant case. The writ was denied by the Fifth District Court of Appeal. That court cited as controlling authority cases now pending review in this Court. (See Williams and Fieselman, supra)

CONCLUSION

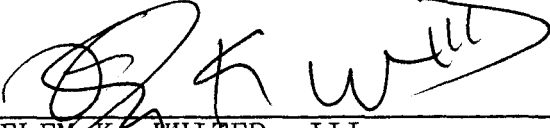
Based on the arguments and authorities presented herein, respondent respectfully prays this honorable court accept jurisdiction of this case, consolidate it with Williams and Fieselman and resolve the conflict regarding certiorari jurisdiction between the courts of appeal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by mail delivery this 19th day of June, 1990, to the Honorable Robert P. Butterworth, Esquire, Attorney General, 210 North Ridgewood Avenue, Suite 447, Daytona Beach, Florida 32114; to: Belle Turner, Assistant Attorney General, 210 North Ridgewood Avenue, Suite 447, Daytona Beach, Florida 32114; to: Reginald Moore, Assistant State Attorney, 251 North Ridgewood Avenue, Third Floor, Daytona Beach, Florida 32114; to The Honorable John W. Watson, Circuit Court Judge, 125 East Orange Avenue, Daytona Beach, Florida 32114; and to: The Honorable Shawn L. Briese, County Court Judge, 125 East Orange Avenue, Daytona Beach, Florida 32114.

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