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CLERK, SUPREME COURT
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IN THE SUPREME COURT OF FLORIDA

CASE NO. 76,825

MILTON THOMAS,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

RESPONDENT'S BRIEF ON JURISDICTION

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PRELIMINARY STATEMENT

Respondent was the prosecution and Petitioner the defendant in the Criminal division of the Circuit Court of the Nineteenth Judicial Circuit, in and for St. Lucie, Florida.

In this brief, the parties will be referred to as they appear before this Honorable Court of Appeal.

The following symbols will be used:

"R" Record on Appeal

"PB" Petitioner's brief

All emphasis has been added by Respondent unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

Respondent accepts Petitioner's Statement of the Case and Facts, as found on pages two and three of his brief, to the extent that it is applicable to the issue of this Court's jurisdiction to hear this case on the basis of conflict.

SUMMARY OF ARGUMENT

The decision of the Fourth District Court of Appeal does not conflict, either expressly or directly with another state appellate decision. The cases Petitioner relies upon are clearly distinguishable and do not involve the same question of law.

ARGUMENT

POINT I

THE DECISION OF COURT BELOW IN THOMAS V. STATE, DOES NOT CONFLICT, EITHER EXPRESSLY OR DIRECTLY, WITH THE DECISIONS IN LEE V. STATE, GOLDBERG V. STATE, AND/OR STATE V. NEWSOME.

Petitioner seeks to establish this Court's "conflict" jurisdiction by arguing that the decision below conflicts with various other decisions. On the contrary, as Petitioner has not demonstrated conflict with other state appellate decisions from the face of the decision sub judice, this Honorable Court lacks jurisdiction to grant Petitioner's application for discretionary review.

It is well-settled that in order to establish conflict jurisdiction, the decision sought to be reviewed (and not opinions or reasons contained therein or in a dissent) must expressly and directly create conflict. Jenkins v. State, 385 So.2d 1356, 1359, (Fla. 1980). Petitioner has not and cannot demonstrate that the decision of the Fourth District Court of Appeal in the instant case expressly and directly conflicts with another state appellate decision.

The cases that Petitioner relies upon involve instances where the State clearly breached its plea agreement or where circumstances required withdrawal of a plea. In Lee v. State, 501 So.2d 591 (Fla. 1987), a law enforcement officer made a recommendation of incarceration in the PSI report submitted to

the court, contrary to the agreement that the State would recommend probation.

In Goldberg v. State, 536 So.2d 364 (Fla. 2d DCA 1988) the Respondent represented that he had no substantial prior criminal record. However, the PSI revealed just the opposite, resulting in a guideline sentence on each count.

In State v. Newsome, 549 So.2d 818 (Fla. 2d DCA 1989) the record was unclear as to what the Petitioner believed she was pleading to so she was permitted to withdraw her plea.

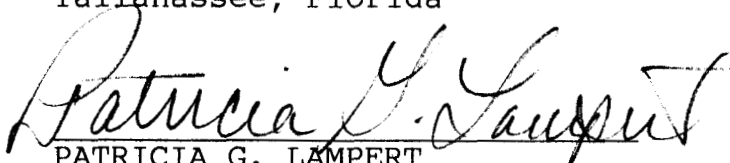
The case below does not conflict, either expressly or directly with any of these cases. The State fulfilled its agreement by reaffirming its recommendation pursuant to the plea agreement "albeit reluctantly". Thomas v. State, 15 F.L.W. D2350 (Fla. 4th DCA Sept. 19, 1990). The court made a thorough inquiry to insure the nature of petitioner's plea. Id. Thus, the circumstances, sub judice, did not require withdrawal of Petitioner's plea.

CONCLUSION

Wherefore, Respondent respectfully requests that this Honorable Court not exercise its discretionary jurisdiction.

Respectfully submitted,

ROBERT A. BUTTERWORTH
Attorney General
Tallahassee, Florida

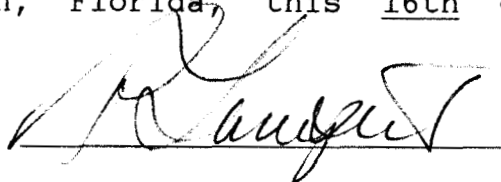


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Brief has been furnished by Courier to: SUSAN D. CLINE, Counsel for Defendant, Public Defender's Office, Fifteenth Judicial Circuit of Florida, The Governmental Center/9th Floor, 301 North Olive Avenue, West Palm Beach, Florida, this 16th day of November, 1990.



Of Counsel

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