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IN THE SUPREME COURT OF FLORIDA

WESTON JACKSON, JEREMIAH)
JONES, EDWARD MORRISON,)
WALTER ZNAJMIECKI, BILLY)
GRAHAM,)
Petitioners,)
vs.)
STATE OF FLORIDA,)
Respondent.)

CASE NO.: 77,070, 77,071, 77,072
77,073, 77,075
CONSOLIDATED

PETITIONERS' BRIEF ON JURISDICTION

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

MICHAEL S. BECKER
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ATTORNEY FOR PETITIONERS

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TABLE OF CITATIONS

AUTHORITIES CITED:

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Walker v. State
546 So.2d 764 (Fla. 5th DCA 1989)

1

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STATEMENT OF THE CASE AND FACTS

Petitioners, while on probation, each committed several other criminal offenses. The Petitioners pled to several of these offenses and when they appeared for sentencing a guidelines scoresheet was prepared in which legal constraint points were assessed for each of the offenses for which the Petitioners were being sentenced.

Petitioners appealed to the Fifth District Court of Appeal and argued that there was no authority for applying a multiplier to the legal constraint points. In each of the cases, the Fifth District Court of Appeal affirmed on the authority of Walker v. State, 546 So.2d 764 (Fla. 5th DCA 1989) and Flowers v. State, 567 So.2d 1055 (Fla. 5th DCA 1990).

Petitioners timely filed Notices to Invoke Discretionary Review.

SUMMARY OF ARGUMENT

Where a District Court of Appeal affirms a case with a citation to another case which is currently pending review before the Florida Supreme Court, this court automatically has jurisdiction to review the case.

ARGUMENT

THE FLORIDA SUPREME COURT HAS JURISDICTION TO ACCEPT THE INSTANT CASES FOR REVIEW WHERE THEY WERE AFFIRMED ON THE AUTHORITY OF A CASE WHICH IS CURRENTLY PENDING REVIEW BEFORE THIS COURT.

In each of the cases below, the Fifth District Court of Appeal affirmed on the authority of Flowers v. State, 567 So.2d 1055 (Fla. 5th DCA 1990). In Flowers, the Fifth District Court of Appeal certified the following question as being of great public importance:

DO FLORIDA'S UNIFORM SENTENCING SENTENCING GUIDELINES REQUIRE THAT LEGAL CONSTRAINT POINTS BE ASSESSED FOR EACH OFFENSE COMMITTED WHILE UNDER LEGAL CONSTRAINT?

A Notice to Invoke Jurisdiction in the Flowers case was timely filed on October 22, 1990. The case is currently pending before this Honorable Court in Flowers v. State, Case No. 76,854.

In Jollie v. State, 405 So.2d 418 (Fla. 1981) this Court held that a District Court of Appeal per curiam opinion which cites as a controlling authority a decision that is pending review in the Supreme Court constitutes prima facie express conflict and allows the Supreme Court to exercise its jurisdiction.


In the instant case, each of the opinions below were affirmed on the authority of Flowers v. State, a case which is currently pending review before this Court. On the clear authority of Jollie, supra, this Court has jurisdiction to review the instant cases.

CONCLUSION

Based on the foregoing reasons and authorities, Petitioners request this Honorable Court to exercise its discretionary jurisdiction and accept the instant cases for review.

Respectfully submitted,

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT


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Phone: 904/252/3367

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been hand delivered to the Honorable Robert A. Butterworth, Attorney General, 210 N. Palmetto Ave, Suite 447, Daytona Beach, FL 32114 in his basket at the Fifth District Court of Appeal and mailed to: Weston Jackson, P.O. Box 1100, Avon Park, FL 33825; Jeremiah Jones, P.O. Box 500, Olustee, FL 32072, Edward N. Morrison, P.O. Box 1807, Bushnell, FL 33513, Walter Znajmiecki, 1150 S.W. Allapattah Road, Indiantown, FL 33956, Billy Graham, P.O. Box 279, East Palatka, FL 32131, this 7th day of January, 1991.


MICHAEL S. BECKER
ASSISTANT PUBLIC DEFENDER

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A P P E N D I C E S

Weston Jackson v. State, DCA Case No. 90-211

Jerimiah Jones v. State, DCA Case No. 90-436

Edward Morrison v. State, DCA Case No. 90-864

Walter Znajmiecki v. State, DCA Case No. 90-746

Billy Graham v. State, DCA Case No. 90-521