SID J. WHITE 300N 28 19991 CLERK, SUAREME JOURT By-Ociner Departy Col. Ex

### IN THE SUPREME COURT OF FLORIDA

HENRY TAYLOR,

Petitioner,

vs.

CASE NO. 78,133

STATE OF FLORIDA,

Respondent.

## APPEAL FROM THE CIRCUIT COURT IN AND FOR BREVARD COUNTY, FLORIDA

## JURISDICTIONAL BRIEF OF PETITIONER

JAMES B. GIBSON PUBLIC DEFENDER SEVENTH JUDICIAL CIRCUIT

MICHAEL S. BECKER ASSISTANT PUBLIC DEFENDER 112-A Orange Avenue Daytona Beach, Florida 32114 (904)252-3367

ATTORNEY FOR PETITIONER

# TABLE OF CONTENTS

PAGE NO.

TABLE OF CONTENTS	i
TABLE OF CITATIONS	ii
STATEMENT OF THE CASE AND FACTS	1
SUMMARY OF ARGUMENT	2
ARGUMENT THE FLORIDA SUPREME COURT HAS JURISDICTION TO ACCEPT THE INSTANT CASE FOR REVIEW WHERE IT WAS AFFIRMED ON THE AUTHORITY OF A CASE WHICH IS CURRENTLY PENDING REVIEW BEFORE THIS COURT.	3
CONCLUSION	4
CERTIFICATE OF SERVICE	4



# TABLE OF CITATIONS

# PAGE NO.

# CASES CITED:

<u>Flowers v. State</u> 567 So.2d 1055 (Fla. 5th DCA 1990)	1,	3
<u>Jollie v. State,</u> 405 So.2d 418 (Fla. 1981)		3
<u>Walker v. State</u> 546 So.2d 764 (Fla. 5th DCA 1989)		1

#### IN THE SUPREME COURT OF FLORIDA

HENRY TAYLOR, Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

CASE NO. 78,133

#### PETITIONER'S BRIEF ON JURISDICTION

#### STATEMENT OF THE CASE AND FACTS

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

Petitioner appealed to the Fifth District Court of Appeal and argued that there was no authority for applying a multiplier to the legal constraint points. The Fifth District Court of Appeal affirmed on the authority of <u>Walker v. State</u>, 546 So.2d 764 (Fla. 5th DCA 1989) and <u>Flowers v. State</u>, 567 So.2d 1055 (Fla. 5th DCA 1990), as well as numerous other cases on the same issue.

Petitioner timely filed a notice to invoke discretionary review.

1

## 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 CASE FOR REVIEW WHERE IT WAS AFFIRMED ON THE AUTHORITY OF A CASE WHICH IS CURRENTLY PENDING REVIEW BEFORE THIS COURT.

In the case below, the Fifth District Court of Appeal affirmed on the authority of <u>Flowers v. State</u>, 567 So.2d 1055 (Fla. 5th DCA 1990)<sup>1</sup>. In <u>Flowers</u>, the Fifth District Court of Appeal certified the following question as being of great public importance:

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

A notice to invoke jurisdiction in the <u>Flowers</u> case was timely filed on October 22, 1990. The case is currently pending before this Honorable Court in <u>Flowers v. State</u>, Case No. 76,854.

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

In the instant case, the opinion below was affirmed on the authority of <u>Flowers v. State</u>, a case which is currently pending review before this Court. On the clear authority of <u>Jollie</u>, <u>supra</u>, this Court has jurisdiction to review the instant case.

3

<sup>&</sup>lt;sup>1</sup> The Fifth District also affirmed on the authority of numerous other cases which in turn were decided on the basis of <u>Flowers</u>.

#### CONCLUSION

Based on the foregoing reasons and authorities, Petitioner requests this Honorable Court to exercise its discretionary jurisdiction and accept the instant case for review.

Respectfully submitted,

JAMES B. GIBSON PUBLIC DEFENDER SEVENTH JUDICIAL CIRCUIT

had

MICHAEL S. BECKER ASSISTANT PUBLIC DEFENDER FLORIDA BAR NO. 267082 112-A Orange Avenue Daytona Beach, Fla. 32114 (904) 252-3367

ATTORNEY FOR PETITIONER

### 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 Avenue, Suite 447, Daytona Beach, Florida 32114 in his basket at the Fifth District Court of Appeal and mailed to Henry Taylor, #113211, P.O. Box 158, Lowell, Fl. 32663-0158 on this 26th day of June, 1991.

4

ichael Specker

MICHAEL S. BECKER ASSISTANT PUBLIC DEFENDER