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IN THE SUPREME COURT OF FLORIDA

CASE NO. 78,164

LEVI RAHMING,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

ON PETITION FOR DISCRETIONARY REVIEW

RESPONDENT'S BRIEF ON JURISDICTION

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TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF CITATIONS.....	ii
PRELIMINARY STATEMENT.....	1
STATEMENT OF THE CASE AND FACTS.....	2
SUMMARY OF ARGUMENT.....	3
ARGUMENT.....	4-6

PETITIONER IMPROPERLY INVOKES THE
DISCRETIONARY JURISDICTION OF THIS
COURT SINCE THE DECISION OF THE FOURTH
DISTRICT COURT OF APPEAL DOES NOT
EXPRESSLY AND DIRECTLY CONFLICT WITH A
DECISION OF ANOTHER DISTRICT COURT OF
APPEAL.

CONCLUSION.....	7
CERTIFICATE OF SERVICE.....	7

TABLE OF CITATIONS

<u>CASES</u>	<u>PAGE</u>
<u>Carter v. State,</u> 571 So.2d 520 (Fla. 4th DCA 1991).....	4,5
<u>Department of Health & Rehabilitative Services v. National Adoption Counseling Service, Inc.,</u> 498 So.2d 888, 889 (Fla. 1986).....	5
<u>Dodi Publishing Co. v. Editorial America, S.A.,</u> 385 So.2d 1369 (Fla. 1980).....	4
<u>Flowers v. State,</u> 567 So.2d 1055 (Fla. 5th DCA 1990), review granted, Case No. 76,854 (Fla. 1990), <u>Walker v. State,</u> 546 So.2d 764 (Fla. 5th DCA 1989).....	5
<u>Gissinger v. State,</u> 481 So.2d 1269 (Fla. 5th DCA 1986).....	5
<u>Jenkins v. State,</u> 385 So.2d 1356, 1359 (Fla. 1980).....	5
<u>Jollie v. State,</u> 405 So.2d 418, 421 (Fla. 1981).....	4
<u>Reaves v. State,</u> 485 So.2d 829 (Fla. 1986).....	5
<u>Scott v. State,</u> 16 FLW D356 (Fla. 2d DCA February 1, 1991).....	5
<u>State v. Whitfield,</u> 487 So.2d 1045 (Fla. 1986).....	6
 <u>OTHER AUTHORITIES</u>	
Article V, Section 3(b)(3), <u>Fla. Const.</u> (1980).....	3,4
<u>Fla. R. App. P.</u> 9.030(a)(2).....	3,4,5

PRELIMINARY STATEMENT

The Petitioner was the Appellant in the Fourth District Court of Appeal and the defendant in a criminal prosecution from the Seventeenth Judicial Circuit, in and for Broward County. The Respondent, State of Florida, was the Appellee and the prosecution, respectively in the lower courts. In this brief, the parties will be referred to as they appear before this Honorable Court.

The symbol "A" will be used to refer to Respondent's Appendix, which is a conformed copy of the appellate court's opinion. Unless otherwise indicated, all emphasis has been supplied by Respondent.

STATEMENT OF THE CASE AND FACTS

Respondent accepts Petitioner's Statement of the Case and Facts appearing on page 2 of his jurisdictional brief to the extent that it is accurate and nonargumentative.

SUMMARY OF ARGUMENT

Respondent respectfully requests this Court, in its discretion, to decline to accept jurisdiction in this case. Petitioner has failed to demonstrate that the decision of the Fourth District Court of Appeal expressly and directly conflicts with a decision of another district court, or that it falls under any of the subdivisions provided in Fla. R. App. P. 9.030(a)(2), or Art. V, Section 3(b)(3), Fla. Const. (1980). Conflict simply does not appear within the four corners of the Fourth District's decision.

ARGUMENT

PETITIONER IMPROPERLY INVOKES THE
DISCRETIONARY JURISDICTION OF THIS
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Petitioner seeks review through conflict jurisdiction pursuant to Article V, Section 3(b)(3), Fla. Const. (1980) and Fla. R. App. P. 9.030(a)(2)(A)(iv), which provides that the discretionary jurisdiction of the Supreme Court may be sought to review a decision of a district court of appeal which expressly and directly conflicts with a decision of another district court of appeal or of the Supreme Court on the same question of law. Respondent respectfully requests this Honorable Court decline to accept jurisdiction in this case, since Petitioner presents no legitimate basis for the invocation of this Court's discretionary jurisdiction.

Since the Fourth District's "citation PCA" below obviously failed to certify that the cited case of Carter v. State, 571 So.2d 520 (Fla. 4th DCA 1991) involved the identical point at issue in the instant case below, it is conceivable that Fourth District's decision offered a mere "counsel notification" citation which would render the decision nonreviewable by this Court for the reasons set forth in Dodi Publishing Co. v. Editorial America, S.A., 385 So.2d 1369 (Fla. 1980). See Jollie v. State, 405 So.2d 418, 421 (Fla. 1981). Indeed, from the four

corners of the Fourth District's opinion, nothing more can be gleaned. (A 1). In this regard, it is well established that inherent or "implied" conflict cannot serve as a basis for the discretionary jurisdiction of this Court. Department of Health & Rehabilitative Services v. National Adoption Counseling Service, Inc., 498 So.2d 888, 889 (Fla. 1986). Consequently, since Petitioner has not shown any express and direct conflict from the face of the District Court's opinion, this Court's jurisdiction has not been established. Jenkins v. State, 385 So.2d 1356, 1359 (Fla. 1980); Reaves v. State, 485 So.2d 829 (Fla. 1986).

Notwithstanding, while the State acknowledges that the Second District in Scott v. State, 16 FLW D356 (Fla. 2d DCA February 1, 1991) correctly notes that its decision prohibiting the scoring of Florida sentencing guideline scoresheet points for each offense upon which a criminal defendant is on legal constraint under Fla. R. Crim. P. 3.701 when he or she is sentenced conflicts with not only Carter but also with the decisions of the Fifth District in Flowers v. State, 567 So.2d 1055 (Fla. 5th DCA 1990), review granted, Case No. 76,854 (Fla. 1990), Walker v. State, 546 So.2d 764 (Fla. 5th DCA 1989), and Gissinger v. State, 481 So.2d 1269 (Fla. 5th DCA 1986), Respondent nonetheless submits that this Court should refuse to review the decision below because both the Fourth and Fifth Districts' resolution of the instant issue is correct for the reasons expressed in those decisions; and alternatively because, even if this Court rules to the contrary in Flowers, Petitioner

would still be completely free to pursue a Fla. R. Crim. P. 3.800(a) motion with the trial judge to correct his sentence in conformity therewith, rather than unnecessarily litigating this issue in this Court. See State v. Whitfield, 487 So.2d 1045 (Fla. 1986).

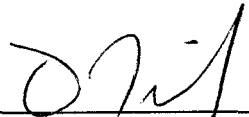
Also in the alternative, Respondent submits that the interests of judicial, prosecutorial and defense economy could all be similarly served simply by staying further proceedings here pending this Court's decision in Flowers, supra.

CONCLUSION

WHEREFORE, based upon the foregoing argument and authorities cited herein, Respondent respectfully requests this Honorable Court decline to accept discretionary jurisdiction in this cause.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Brief has been furnished by U.S. Mail to: ELLEN MORRIS, Assistant Public Defender, Counsel for Petitioner, Governmental Center, 9th Floor, 301 North Olive Avenue, West Palm Beach, Florida 33401, this 17th day of July, 1991.



Of Counsel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Appendix has been furnished by U.S. Mail to: ELLEN MORRIS, Assistant Public Defender, Counsel for Petitioner, Governmental Center, 9th Floor, 301 North Olive Avenue, West Palm Beach, Florida 33401, this 17th day of July, 1991.



Of Counsel