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SEP 16 1991

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

EDDIE MACK LOCK,

Petitioner,

v.

CASE NO. 78,472

2DCA CASE NO. 90-2990

STATE OF FLORIDA,

Respondent.

ON PETITION FOR DISCRETIONARY REVIEW OF THE DECISION OF THE
SECOND DISTRICT COURT OF APPEAL

APPEAL FROM THE CIRCUIT COURT
IN AND FOR LEE COUNTY
STATE OF FLORIDA

BRIEF OF RESPONDENT ON JURISDICTION

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SUMMARY OF THE ARGUMENT

No conflict exists between the first and Second District Court's of Appeal as the First District has receded from its conflicting opinion.

ARGUMENT

ISSUE I

WHETHER THE DECISION OF THE DISTRICT COURT IS
IN CONFLICT WITH THE DECISION OF THE FIRST
DISTRICT COURT IN GHOLSTON V. STATE, 16 FLW
46 (Fla. 1st DCA, Dec. 17, 1990)

Jollie v. State, 405 So.2d 418 (Fla. 1981) dictates that a District Court of appeal per curiam opinion which cites as controlling authority decision that is either pending review in or has been reversed by the Supreme Court continues to constitute prima facie express conflict and allows the Supreme Court to exercise its jurisdiction. However, this is only a presumption of conflict which may be rebutted.

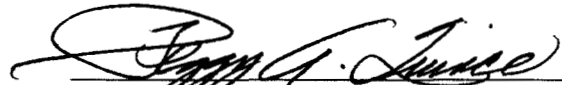
At the time the Second District Court of appeal decided the instant case, conflict existed with Gholston v. State, 16 FLW 46 (Fla. 1st DCA, Dec. 17, 1990). However, as Appellant correctly notes, the First District Court of Appeals has since receded from Gholston, Id and now agrees with the Second District that Section 775.084(4), Florida Statutes (1990) allows enhancement of penalties for first-degree felonies punishable by life. See Burdick v. State, 16 FLW (D) 1963 (Fla. 1st DCA, July 25, 1991).

CONCLUSION

Based on the above argument and authorities, Respondent respectfully requests that this Court decline discretionary jurisdiction of this case pursuant to Article V Section 3(6)(3) of the Florida Constitution.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

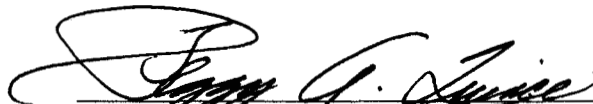


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Kevin Briggs, Assistant Public Defender, P. O. Box 9000 -- Drawer PD, Bartow, Florida 33830 on this 4th day of September, 1991.



OF COUNSEL FOR RESPONDENT