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SID J. WHITE

SEP 19 1991

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

JOSE REINALDO AIRA,

Petitioner,

v.

CASE NO. 78,486

STATE OF FLORIDA,

Respondent.

_____ /

JURISDICTIONAL BRIEF OF RESPONDENT

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SUMMARY OF ARGUMENT

This court has jurisdiction to review the instant case.

ARGUMENT

THIS COURT HAS JURISDICTION.

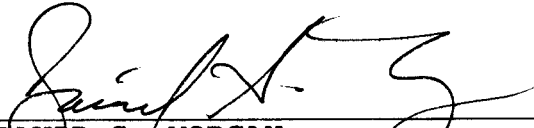
"[F]or this Court to possess subject-matter jurisdiction . . . there must be some statement or citation in the opinion that hypothetically could create conflict if there were another opinion reaching a contrary result." *The Florida Star v. B.J.F.*, 530 So.2d 286, 288 (Fla. 1988), *construing* Art. V, §3(b)(3), Fla. Const. Although the decision below merely "note[d]" conflict with *Lewis v. State*, 574 So.2d 245 (Fla. 2d DCA 1991), the decision in *Lewis* does conflict with the holding in *Walker v. State*, 546 So.2d 764 (Fla. 5th DCA 1989), regarding multiplication of legal constraint points. Because of the actual conflict between the instant decision and *Lewis*, this court may properly exercise its discretionary jurisdiction. As noted by the petitioner, the legal constraint multiplier issue is currently before this court in *Flowers v. State*, case no. 76,854.

CONCLUSION

This court may properly exercise its discretionary jurisdiction.

Respectfully submitted,

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COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to Kenneth Witts, Assistant Public Defender, 112-A Orange Ave., Daytona Beach, FL 32114, by interoffice delivery on this 17th day of September, 1991.



DAVID S. MORGAN
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