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CLERK, SUPREME COURT

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IN THE SUPREME COURT OF FLORIDA

HENRY LANE,
Petitioner,
vs.
STATE OF FLORIDA,
Respondent.

Case No. 78,534

PETITIONER'S BRIEF ON JURISDICTION

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PRELIMINARY STATEMENT

Petitioner was the defendant in the Criminal Division of the Circuit Court of the Seventeenth Judicial Circuit, in and for Broward County, Florida, and the appellee in the Fourth District Court of Appeal. Respondent was the prosecution and the appellant below.

In the brief, the parties will be referred to as they appear before this Honorable Court.

The following symbol will be used:

R = Record on Appeal

STATEMENT OF THE CASE AND FACTS

Petitioner was convicted of purchase of cocaine within one thousand feet of a school (R 12). After a plea of nolo contendere, he was found to be drug dependent pursuant to Section 397.021(6), Florida Statutes (1989) and was placed on two (2) years of community control to be followed by three years on probation (R 12-13, 21). Section 397.12, Florida Statutes (1989).

On appeal, the Fourth District Court of Appeal reversed the sentence citing the three year mandatory minimum set forth in Section 893.13(1)(e). State v. Lane, Case No. 90-2569 (June 19, 1991) motion for rehearing and/or certification denied July 25, 1991 (Appendix 1-11). On August 21, 1991 in State v. Scates, Case No. 90-3174 (Fla. 4th DCA Opinion filed August 21, 1991) the Fourth District Court of Appeal cited State v. Lane, 16 F.L.W. 1631 (Fla. 4th DCA June 28, 1991) and certified the identical issue as a question of great public importance to this Court. State v. Scates, supra, (Appendix 12-14). The certified question is:

MAY A TRIAL COURT PROPERLY DEPART FROM THE MINIMUM MANDATORY PROVISIONS OF SECTION 893.13(1)(E), FLORIDA STATUTES (1989), UNDER THE AUTHORITY OF THE DRUG REHABILITATION PROVISION OF SECTION 397.12, FLORIDA STATUTES (1989).

Counsel in Scates filed a notice of intent to invoke discretionary jurisdiction of this Court on August 22, 1991 (Appendix 15-16). Petitioner thereupon noticed his intent to invoke this court's discretionary jurisdiction to review this cause on August 26, 1991. This jurisdictional brief follows.

SUMMARY OF ARGUMENT

The decision in the present case is cited as controlling authority in another decision of the Fourth District Court of Appeal, State v. Scates, Case No. 90-3174 (Fla. 4th DCA Opinion filed August 21, 1991) [Appendix] which certifies to this Court a question of great public importance:

MAY A TRIAL COURT PROPERLY DEPART FROM THE
MINIMUM MANDATORY PROVISIONS OF SECTION
893.13(1)(e), FLORIDA STATUTES (1989), UNDER
THE AUTHORITY OF THE DRUG REHABILITATION
PROVISION OF SECTION 397.12, FLORIDA STATUTES
(1989).

Since this Court has jurisdiction of Scates, it also has jurisdiction to review the decision in Petitioner's case which presents the identical issue. Article V, § 3(b)(4), Florida Constitution.

ARGUMENT

THIS COURT SHOULD EXERCISE ITS DISCRETIONARY JURISDICTION TO REVIEW THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL BELOW WHICH HAS BEEN CITED AS CONTROLLING AUTHORITY IN A SUBSEQUENT CASE WHICH CERTIFIES THE IDENTICAL ISSUE TO THIS COURT AS A QUESTION OF GREAT PUBLIC IMPORTANCE.

Article V, Section 3(b)(4) of the Constitution of Florida empowers this Court to review any decision of a district court of appeal which certifies to this Court a question of great public importance. The present case has been cited by the Fourth District as controlling authority in a subsequent case by the Fourth District which certifies the identical issue to this Court as a question of great public importance. State v. Scates, Case No. 90-3174 (Fla. 4th DCA Opinion filed August 21, 1991) [Appendix 12-14]. Scates is pending review in this Court (Appendix 15-16). In that case, the district court reviewed "...a factual scenario identical to [that] in State v. Lane, 16 F.L.W. 1631 (Fla. 4th DCA June 28, 1991..." [Appendix at 12]. The Scates Court, citing Lane as controlling authority, reversed the sentence of two years probation, a downward departure. The District Court in Scates held, as it did in Lane that the trial court improperly relied on Section 397.12, Florida Statutes (1989) and was bound to impose the three year mandatory minimum sentence pursuant to Section 893.13(1)(e), Florida Statutes (1989). The Scates court certified the issue as one of great public importance:

MAY A TRIAL COURT PROPERLY DEPART FROM THE MINIMUM MANDATORY PROVISIONS OF SECTION 893.13(1)(e), FLORIDA STATUTES (1989), UNDER THE AUTHORITY OF THE DRUG REHABILITATION PROVISION OF SECTION 397.12, FLORIDA STATUTES (1989).

[Appendix 12-14]. Petitioner also sought certification by the District Court of the identical issue in his motion for rehearing or certification which was filed by Petitioner and denied by the Fourth District on July 25, 1991, prior to Scates (Appendix 4-11).

Article V, Section 3(b)(4) of the Florida Constitution gives this Court jurisdiction to review a question of great public importance. Therefore, this Court clearly has jurisdiction in Scates. Moreover, since counsel in Scates filed its notice of intent to invoke the discretionary jurisdiction of this Court Petitioner anticipates Scates will in fact be pending in this Court when this court reviews the jurisdictional briefs in this case. State v. Scates, Case No. 90-3174 (Fla. 4th DCA August 21, 1991) [Appendix 15-16]. Consequently, this Court has jurisdiction in Petitioner's case. State v. Brown, 475 So.2d 1 (Fla. 1985); Jollie v. State, 405 So.2d 418 (Fla. 1981).

Moreover, the instant case presents an issue which this Court should resolve. In Petitioner's case, as in Scates, the sentencer relied upon Section 397.12, Florida Statutes (1989) and State v. Herrin, 568 So.2d 920 (Fla. 1990) to depart downward from the three year mandatory minimum, noting that Petitioner had purchased a minimal amount of cocaine for personal use, that he was under the influence of alcohol, that he suffered from substance abuse; and that he was amenable to and capable of rehabilitation (Slip Opinion at 3, 9-12). As a result of the decision in Lane and in Scates, these individuals will forego the opportunity of rehabilitation and instead be consigned to an already over burdened prison system. Certainly, this is an issue which has great impact on the sentences

of those individuals unfortunate enough to be affected by it. And the numbers of those individuals is far from infinitesimal. In the Seventeenth Judicial Circuit, a number of trial judges are applying sentencing alternatives, via Chapter 397 to defendants convicted under Section 893.13(1)(e). The issue raised herewith and in Scates is raised in at least ten cases currently pending before the Fourth District Court of Appeal and assigned to attorneys in the office of undersigned counsel.

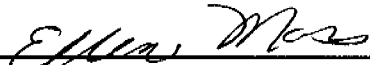
By virtue of the Fourth District's citation to Petitioner's case as controlling authority in Scates and by virtue of the Fourth District's certification of the issue as a question of great public importance in Scates, Petitioner's case presents the same issue for review as Scates. Since undersigned counsel anticipates that Scates will be pending review before this Court by the time the jurisdictional briefs herein are considered by this Court, this Court should accept jurisdiction of the instant case. State v. Brown, supra; Jollie v. State, supra.

CONCLUSION

Based on the foregoing arguments and the authorities cited therein, Mr. Lane respectfully requests this Court to accept jurisdiction in his case.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished by courier to Joseph A. Tringali, Assistant Attorney General, Elisha Newton Dimick Building, Room 240, 111 Georgia Avenue, West Palm Beach, Florida 33401 this 5th day of September, 1991.



Counsel for Petitioner