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SID J. WHITE
SEP 25 1991
CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

CASE NO. 78,534
(4TH DCA NO-90-3174)

HENRY LANE,
PETITIONER,

v.

STATE OF FLORIDA,
RESPONDENT.

ON PETITION FROM THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA, FOURTH DISTRICT

RESPONDENT'S ANSWER BRIEF ON JURISDICTION

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PRELIMINARY EMENT

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

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**.

"AB"

Petitioner's Brief on Jurisdiction.

STATEMENT OF THE CASE AND FACTS

Respondent accepts Petitioner's Statement of the Case and Facts as presented in Petitioner's Brief on Jurisdiction (AB 2).

SUMMARY OF THE ARGUMENT

The decision of the Fourth District Court of Appeal is neither in conflict with the decision of any other district court nor any decision of this Court. Although the Fourth District certified a question of great public importance in the case of State v. Scates, 16 F.L.W. D2203 (Fla. 4th DCA August 21, 1991), this Court has not yet accepted jurisdiction. Therefore, the holding of Jollie v. State, 405 So. 2d 418 (Fla. 1981) does not apply.

ARGUMENT

THIS COURT SHOULD NOT EXERCISE ITS
DISCRETIONARY JURISDICTION TO REVIEW
THE DECISION OF THE FOURTH DISTRICT
COURT OF APPEAL.

The case at bar is the second of three which were **decided** by the Fourth District Court of Appeal involving the issue of a downward departure from a minimum mandatory sentence based on the authority of drug rehabilitation statutes.

In the first case, State v. Baxter, 16 F.L.W. D1561 (Fla. 4th DCA June 12, 1991), the Court ruled that the trial court improperly departed from the minimum mandatory provision. The case sub judice followed Baxter, and the result was the same. In the third case, State v. Scates, 16 F.L.W. D2203 (Fla. 4th DCA August 21, 1991), the Court followed its previous decisions and further certified the following question 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)**

In order for this Court to exercise its discretionary jurisdiction, Petitioner must show that the decision of a district court of appeal is in conflict with the decision of another district court or a decision of the Florida Supreme Court. Fla. R. App. P. 9.030(a)(2)(A)(iv); Jenkins v. State, 385 So. 2d 1356, 1359 (Fla, 1980).

At bar, no conflict exists, none can be demonstrated. In fact, the decisions of the Fourth District Court of Appeal dealing with this issue are in complete agreement,

Further, this Court has not accepted jurisdiction in Scates v. Florida, Fla. Case No. 78,533, and may choose not to exercise discretionary jurisdiction in that matter. Thus, it is by no means certain that Jollie v. State, 405 So. 2d 418 (Fla. 1981) is indeed applicable.


Accordingly, this **Court** should decline to **exercise** discretionary jurisdiction **in** the case **at** bar.

CONCLUSION

The decision of the Fourth District Court of Appeal is not reviewable by this Court in that it does not conflict with the decision of any other district court of appeal, nor a decision of this Court. Further, this Court has not accepted jurisdiction in a subsequent case in which it was presented with a certified question. Accordingly, this Court should decline to exercise discretionary jurisdiction in this matter.

Respectfully submitted,

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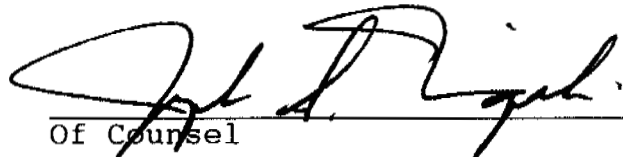


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished to: ELLEN MORRIS, Assistant Public Defender, 15th Judicial Circuit, Governmental Center, 9th Floor, 301 North Olive Avenue, West Palm Beach, FL 33401, by Courier, this 24th day of September, 1991.


Of Counsel