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Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

CASE NO. 78,689

TODD RUSSELL BAUMGARDNER,

PETITIONER,

v.

STATE OF FLORIDA,

RESPONDENT.

RESPONDENT'S ANSWER BRIEF ON JURISDICTION

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL
TALLAHASSEE, FLORIDA

JACOUELINE BARAKAT
ASSISTANT ATTORNEY GENERAL
111 GEORGIA AVE., SUITE 204
WEST PALM BEACH, FL 33401
FLORIDA BAR #780707
(407) 837-5062

COUNSEL FOR RESPONDENT

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF CITATIONS.....	ii
PRELIMINARY STATEMENT..	1
STATEMENT OF THE CASE AND FACTS....	2
SUMMARY OF THE ARGUMENT.	3
ARGUMENT.....	3 - 5

POINT ON APPEAL

THE COURT SHOULD DECLINE THE EXERCISE
OF ITS DISCRETIONARY JURISDICTION TO
REVIEW THE DECISION BELOW.

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

TABLE OF CITATIONS

<u>CASES</u>	<u>PAGE</u> <u>PAGE</u>
Baxter v. Letts, Case No. 78,294 (Fla. 1991)	5
Jollie v. State, 405 So. 2d 418..... (Fla. 1981)	5
State v. Baumgardner, 16 Fla. D1934..... (Fla. 4th DCA July 3, 1991)	4
State v. Brown, 475 So. 2d 1..... (Fla. 1985)	5
State v. Rodriguez, 16 FLW D2374..... (Fla. 3rd DCA September 10, 1991)	6
State v. Scates, 16 FLW D2203..... (Fla. 4th DCA August 21, 1991)	4,5

OTHER AUTHORITIES

A 1 V. Section (), <u>Florida Constitution</u>	4
3 (), <u>Florida Statutes</u> ()	
Section <u>Florida Statutes</u> (1989)	

PRELIMINARY STATEMENT

Todd R. Baumgardner was the defendant in the trial court, the appellee in the Fourth District Court of Appeal and is the Petitioner before this Court. Therefore, he will be referred to herein as "Petitioner".

The State of Florida was the prosecution in the trial court, the appellant in the Fourth District Court of Appeal and is the Respondent before this Court. Therefore, the State of Florida will be **referred** to as the "Respondent" or "State" herein.

The following symbols will be used:

"R"	Record on Appeal
"PB"	Petitioner's Brief on Jurisdiction.

STATEMENT OF THE CASE AND FACTS

Respondent accepts Petitioner's statement of the case and facts to the limited extent that they represent a reasonably accurate, non-argumentative synopses af the proceedings below.

SUMMARY OF ARGUMENT

This Honorable Court should decline to exercise its discretionary jurisdiction pursuant to Article V, Section 3(b)(3) of the Florida Constitution where the legal issue presented on appeal was not certified by the Fourth District Court of Appeal as a question of great public importance, although this same issue was soon after certified by the Fourth District in State v. Scates, infra, (**Case** No. 78,523). Furthermore, after Scates was decided, the Fourth District still declined to certify the issue in sub judice as a question of great public importance when it denied Petitioner's Motion for Rehearing. The fact that the Fourth District cited State v. Baxter, infra, as controlling authority in both Scates and in the instant case, in conjunction with the fact that **Scates** and Baxter are currently pending before this Court, is not a persuasive basis for accepting jurisdiction over sub judice where Baxter is pending review before this Court as Baxter v. Letts, and does not address the merits of the same legal issue which Petitioner **seeks** review of in this case.

A R G U M E N T

POINT ON APPEAL

**THE COURT SHOULD DECLINE THE EXERCISE
OF ITS DISCRETIONARY JURISDICTION TO
REVIEW THE DECISION BELOW.**

Petitioner seeks to invoke the discretionary jurisdiction of this Court under Article V, Section 3(b)(3) of the Constitution of the State of Florida on the ground that this Court may review any decision of a district court of appeal which certifies to this Court a question of great public importance.

However, in its decision in the instant case, the Fourth District Court of Appeal did not certify to this Court a question of great public importance [See State v. Baumgardner, 16 Fla. D1934 (Fla. 4th DCA July 3, 1991)], as it later did in State v. Scates, 16 FLW. D2203 (Fla. 4th DCA August 21, 1991), which dealt with the same legal issue raised in sub judice. In Scates, the following was certified as 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)?

Id.

Moreover, as acknowledged by Petitioner, when the Fourth District denied his motion for rehearing on September 4,

1991, the court did not certify this question as it had just previously done in Scates, supra. (See Appendix- Exhibit "A").¹ Hence, because in two separate instances in sub judice, the Fourth District declined to certify to this Court a question of great public importance, this Court should not exercise its discretionary power to review the decision below.

Petitioner secondly contends that because Scates is pending in this Court (*i.e.*, **Case No. 78,533**), the Court has jurisdiction over Petitioner's case under State v. Brown, 475 So. 2d 1 (**Fla. 1985**) and Jollie v. State, 405 So. 2d 418 (**Fla. 1981**) because on appeal the Fourth District cited State v. Baxter, 16 FLW 1561 (**Fla. 4th DCA June 21, 1991**) as controlling authority and Baxter is currently pending review before this Court under Baxter v. Letts, Case No. **78,294**. However, as acknowledged by Petitioner, Baxter v. Letts is not before this Court on the same legal issue in which Petitioner seeks review of, but rather Baxter seeks this Court to issue the appropriate writ to vacate the decision below and require the Fourth District to allow Baxter to be represented by appointed counsel on the State's appeal of Baxter's sentence. (See Appendix - Exhibit "C"). Consequently, Petitioner's reliance on Jollie and Brown is misplaced.

¹ Furthermore, in Petitioner's Motion for Rehearing, he never asked the Fourth District to certify the question that was certified in Scates to this Court. (*See* Appendix - Exhibit "B").

Respondent would further note that, thus far, there is no conflict between the Fourth District's holding concerning the issue at bar with that of other District Courts of Appeal. Compare, State v. Rodriguez, 16 FLW D2374 (Fla. 3rd DCA September 10, 1991). (Appendix - Exhibit "D").

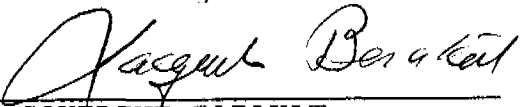
Hence, Respondent respectfully submits that this Honorable court must summarily decline jurisdiction in the case. Should this Court disagree with Respondent's position, the State would alternatively request that this Court stay the exercise of its discretionary jurisdiction to review the decision below and await the resolution of the merits in Scates which is dispositive of the issue presented at bar,

CONCLUSION

Based on the foregoing arguments and authorities cited herein, Respondent respectfully requests this Court to deny jurisdiction in the case or, alternatively, stay jurisdiction pending the resolution of Scates, supra.

Respectfully submitted,

ROBERT A. BUTTERWORTH
Attorney General
Tallahassee, Florida 33401

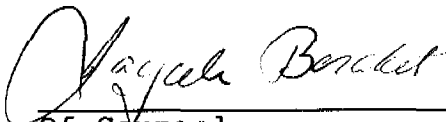


JACQUELINE BARAKAT
Assistant Attorney General
Florida Bar #780707
111 - Georgia Avenue, Room 204
West Palm Beach, Florida 33401
(407) 837-5062

Counsel for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Answer Brief on Jurisdiction has been furnished this 18th day of October, 1991, to Margaret Good, Assistant Public Defender, 15th Judicial Circuit, 301 N. Olive Avenue, 9th Floor, West Palm Beach, Florida, 33401, by Courier.



Of Counsel

IN THE SUPREME COURT OF FLORIDA

CASE NO-78,689

TODD RUSSELL BAUMGARDNER,

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.....

APPENDIX TO

RESPONDENT'S ANSWER BRIEF ON JURISDICTION

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL
TALLAHASSEE, FLORIDA

JACQUELINE BARAKAT
ASSISTANT ATTORNEY GENERAL
111 GEORGIA AVE., SUITE 204
WEST PALM BEACH, FL 33401
FLORIDA BAR #780707
(407) 837-5062

COUNSEL FOR RESPONDENT

INDEX TO APPENDIX

EXHIBIT

LETTER

4th DCA DENIAL OF REHEARING

"A"

PETITIONER'S MOTION FOR REHEARING

"B"

PETITION FOR A WRIT OF MANDAMANUS OR
AN ORIGINAL WRIT, OR FOR A WRIT OF HABEAS CORPUS

"C"

STATE v. RODRIGUEZ,
16 FLW D2374 (Fla. 3rd DCA 9/10/91)

"D"