

FILED

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CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

JERRY RAY ROBINS,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

CASE NO. 78,876

RESPONDENT'S BRIEF ON JURISDICTION

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ISSUE

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CASE NO. 78,876

PRELIMINARY STATEMENT

Respondent, the State of Florida, was the prosecuting authority in the trial court and appellee below and will be referred to herein as "the State" or "Respondent." Petitioner, Jerry Ray Robins, was the defendant in the trial court and appellant below and will be referred to herein as "Petitioner."

JURISDICTIONAL STATEMENT

The Supreme Court of Florida has jurisdiction to review a decision of the district court of appeal that expressly and directly conflicts with a decision of the supreme court or another district court of appeal on the same point of law. Fla. Const. art. V, § 3(b)(3); Fla. R. App. P. 9.030(a)(2)(A)(iv).

STATEMENT OF THE CASE AND FACTS

The State is in substantial agreement with Petitioner's statement of the case and facts.

SUMMARY OF ARGUMENT

Because the First District Court of Appeal expressly recognized its direct conflict with Willingham v. State, 541 So.2d 1240 (Fla. 2d DCA), rev. denied, 548 So.2d 663 (Fla. 1989); Ngai v. State, 556 So.2d 1130 (Fla. 3d DCA 1989); and State v. Rodriguez, 582 So.2d 1189 (Fla. 3d DCA), rev. granted, No. 77,859 (Fla. 1991), the State does not oppose discretionary review.

ARGUMENT

ISSUE

WHETHER THE DECISION OF THE FIRST DISTRICT COURT OF APPEAL EXPRESSLY AND DIRECTLY CONFLICTS WITH DECISIONS OF THIS COURT AND OTHER DISTRICT COURTS OF APPEAL.

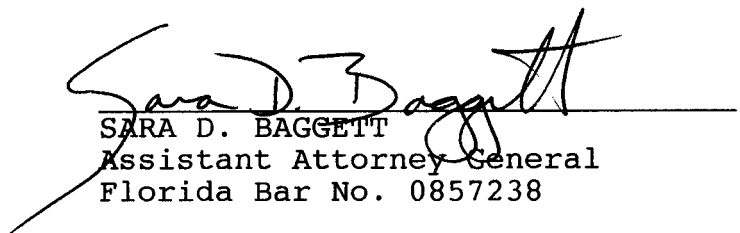
The First District Court of Appeal expressly recognized its direct conflict with Willingham v. State, 541 So.2d 1240 (Fla. 2d DCA), rev. denied, 548 So.2d 663 (Fla. 1989); Ngai v. State, 556 So.2d 1130 (Fla. 3d DCA 1989); and State v. Rodriguez, 582 So.2d 1189 (Fla. 3d DCA), rev. granted, No. 77,859 (Fla. 1991), and the State does not oppose discretionary review. The State would note that, although the Third District Court of Appeal in Rodriguez certified a question that is directly applicable to this case, the facts between the two cases are vastly different. As a result, if this Court were to accept review of this case, the State would present a slightly different analysis of the issue than the State has presented in Rodriguez. Therefore, the State would respectfully request that this case not be consolidated with Rodriguez.

CONCLUSION

Based on the foregoing arguments and authorities, the State respectfully asserts that this Honorable Court should exercise its discretionary jurisdiction in this matter.

Respectfully submitted,

ROBERT A. BUTTERWORTH
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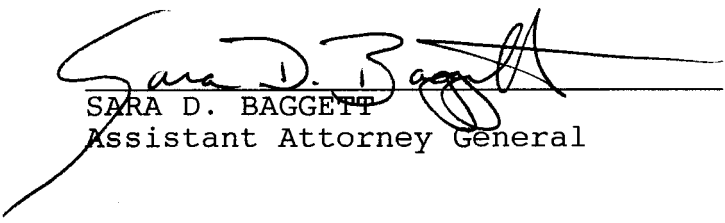
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Abel Gomez, Assistant Public Defender, Leon County Courthouse, Fourth Floor North, 301 South Monroe Street, Tallahassee, Florida 32301, this 25th day of November, 1991.


SARA D. BAGGETT
Assistant Attorney General