

IN THE SUPREME COURT OF FLORIDA

**FILED**

SID J. WHITE

**DEC 2 1991**

CLERK, SUPREME COURT

By \_\_\_\_\_  
Chief Deputy Clerk

STATE OF FLORIDA,

Petitioner,

v.

CASE NO. 79013

5th DCA: 90-1528

WILLIAM LAWRENCE COWHIG, JR.,

Respondent.

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JURISDICTIONAL BRIEF OF PETITIONER

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TABLE OF CONTENTS

	<u>PAGE:</u>
TABLE OF AUTHORITIES.....	ii
STATEMENT OF CASE AND FACTS.....	1
SUMMARY OF ARGUMENT.....	2
ARGUMENT	
THIS COURT CAN AND SHOULD EXERCISE ITS DISCRETIONARY JURISDICTION IN THIS CASE.....	3
CONCLUSION.....	4
CERTIFICATE OF SERVICE.....	4

TABLE OF AUTHORITIES

<u>CASE:</u>	<u>PAGE(S):</u>
<i>Cowhig v. State,</i> 16 F.L.W. D1920 (Fla. 5th DCA July 25, 1991), <i>motion for certification denied</i> November 18, 1991.....	1, 3
<i>Dixon v. State,</i> 541 So.2d 637 (Fla. 1st DCA 1989).....	2-3
<i>State v. Camp,</i> 579 So.2d 763 (Fla. 5th DCA 1991).....	1, 3
<i>State v. Camp,</i> case no. 78,085.....	2-4
<i>State v. Lofton,</i> 534 So.2d 1148(Fla. 1988).....	4, 3

STATEMENT OF CASE AND FACTS

The decision below stated in its entirety:

We reverse defendant's conviction for dealing in stolen property on the authority of *State v. Camp*, 579 So.2d 763 (Fla. 5th DCA 1991). Appellant's other claims of error are without merit.

*Cowhig v. State*, 16 F.L.W. D1920 (Fla. 5th DCA July 25, 1991), motion for certification denied November 18, 1991 (see appendix).

SUMMARY OF ARGUMENT

This court has subject matter jurisdiction because the legal issue in this case is currently pending review before this court in *State v. Camp*, case no. 78,085. This court exercised conflict jurisdiction in *Camp* based upon the direct and express conflict with *Dixon v. State*, 541 So.2d 637 (Fla. 1st DCA 1989).

ARGUMENT

THIS COURT CAN AND SHOULD EXERCISE  
ITS DISCRETIONARY JURISDICTION IN  
THIS CASE.

"A per curiam decision without opinion of a district court of appeal which cites as controlling authority a decision that is pending review in this Court constitutes prima facie express conflict for purposes of jurisdiction." *State v. Lofton*, 534 So.2d 1148, 1149 (Fla. 1988), citing *Jollie v. State*, 405 So.2d 418, 420 (Fla. 1981). The decision below stated in its entirety:

We reverse defendant's conviction for dealing in stolen property on the authority of *State v. Camp*, 579 So.2d 763 (Fla. 5th DCA 1991). Appellant's other claims of error are without merit.

*Cowhig v. State*, 16 F.L.W. D1920 (Fla. 5th DCA July 25, 1991), motion for certification denied November 18, 1991 (see appendix).

The legal issue in *Camp*, whether or not passing stolen checks constitutes dealing in stolen property, is currently under review in this court in *State v. Camp*, case no. 78,085. This court exercised conflict jurisdiction based upon direct and express conflict between *Camp* and *Dixon v. State*, 541 So.2d 637 (Fla. 1st DCA 1989).

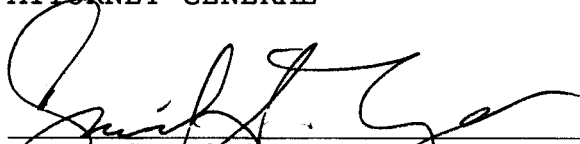
As the conflict between the districts has yet to be resolved, this court can and should accept jurisdiction to review the issue common to this case and *Camp*.

CONCLUSION

This court can and should exercise its discretionary jurisdiction to review the legal issue common to this case and *State v. Camp*, case no. 78,085.

Respectfully submitted,

ROBERT A. BUTTERWORTH  
ATTORNEY GENERAL

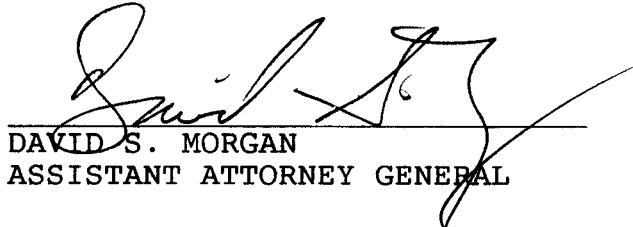


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CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to Gary W. Tinsley, Esq., P.O. Box 2196, Daytona Beach, FL 32115-2196, by mail delivery on this 26th day of November, 1991.



DAVID S. MORGAN  
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