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IN THE SUPREME COURT OF FLORIDA

JAMES MONROE RAULERSON,

Petitioner,

v.

CASE NO. 79,051

STATE OF FLORIDA,

Respondent.

_____ /

RESPONDENT'S BRIEF ON JURISDICTION

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ISSUE

WHETHER THIS COURT SHOULD ACCEPT THE
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PRELIMINARY STATEMENT

Petitioner, James Monroe Raulerson, appellant below and defendant in the trial court, will be referred to herein as "petitioner." Respondent, the State of Florida, appellee below, will be referred to herein as "the State."

JURISDICTIONAL STATEMENT

Article V, Section 3(b)(3) of the Florida Constitution provides, in pertinent part, as follows:

The Supreme Court . . . , [m]ay review any decision of a district court of appeal . . . that expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law.

The conflict between decisions "must appear within the four corners of the majority decision," and "[n]either a dissenting opinion nor the record itself can be used to establish jurisdiction." Reaves v. State, 485 So.2d 829, 830 (Fla. 1986). Neither will a concurring opinion support jurisdiction under Section 3(b)(3). Jenkins v. State, 385 So.2d 1356, 1359 (Fla. 1980). Further, it is the "conflict of decisions, not conflict of opinions or reasons that supplies jurisdiction for review by certiorari." Id., at 1359.

STATEMENT OF THE CASE AND FACTS

The State accepts petitioner's statement of the case and facts as being generally supported by the First District's decision below.

SUMMARY OF ARGUMENT

Because there is na conflict between the district court's decision below and the decisions of other state courts on the same question of law, petitioner incorrectly attempts to invoke this Court's discretionary conflict jurisdiction. However, because the cases cited as controlling authority by the district court below are currently pending review in this Court on grounds other than interdistrict conflict, the State suggests that review should be granted here on the same grounds present in the cited cases. Should this Court decide to accept review of the instant case, the State requests that this case be **held in abeyance** pending the outcome of the cited cases.

ARGUMENT

Relying on this Court's decision in Jollie v. State, 405 So.2d 418 (Fla. 1981), petitioner seeks to invoke this Court's discretionary conflict jurisdiction based on the First District's reliance in the opinion below on its prior decisions in Burdick v. State, 584 So.2d 1035 (Fla. 1st DCA 1991) (en banc), rev. pending, Case No. 78,466 (Fla.); and Perkins v. State, 583 So.2d 1103 (Fla. 1st DCA 1991), rev. pending, Case No. 78,613 (Fla.). Petitioner, with no analysis whatsoever, claims that under Jollie, the First District's citation to Burdick and Perkins, both of which are currently pending review in this Court, creates "direct and express conflict under Article V, Section 3(b)3 [sic] of the Florida Constitution." Petitioner's brief at 3-4.

In Jollie, this Court held:

[A] district court of appeal per curiam opinion which cites as controlling authority a decision that is 'either pending review in or has been reversed by this Court continues to constitute prima facie express conflict and allows this Court to **exercise** its jurisdiction.

Id., 405 So.2d at 420 (emphasis added). In Jollie, the "affirmance PCA" case cited by the Fifth District Court of Appeal in Jollie's case directly and expressly conflicted with a decision from the First District. In other words, there was interdistrict conflict and it was appropriate for this Court to exercise its conflict jurisdiction.

Petitioner's reliance on Jollie is misplaced, however, because there is no interdistrict conflict here. Neither of the controlling decisions cited by the First District in this case is before this Court on the basis of conflict jurisdiction.¹ Rather, Burdick is pending review based on the First District's en banc certification to this Court of a question of great public importance; and the petitioner in Perkins, who is represented by the same counsel who **represents the** petitioner in the instant case, sought review in this Court based on the First District's express **determination** that the habitual violent felony offender provision is constitutional. Hence, as can be seen, contrary to petitioner's brief, there is no interdistrict conflict here.

It is important for a petitioner before this Court to accurately attribute the basis on which he or she seeks discretionary review. Because there is no interdistrict conflict on the issues at question here, it would be improper for this Court to exercise its conflict jurisdiction in this case, as petitioner suggests. Nevertheless, because both of the controlling cases cited below by the First District are pending review in this Court, the State agrees that review should be granted on the

Indeed, both Burdick and Perkins are in complete harmony with the decisions of the other district courts dealing with, respectively, the applicability of the habitual felony offender statute to first degree felonies punishable by life, and the constitutionality of the habitual violent felony offender provision.

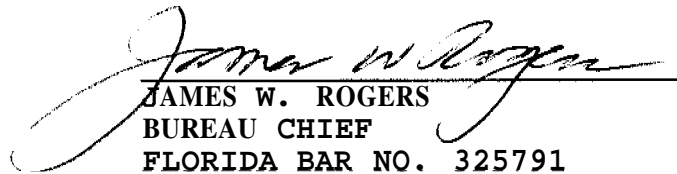
basis of the Burdick court's en banc certification of a question of great public importance; and on the **ground** that the First District in the instant case, and in the cited case of Perkins, expressly declared valid the statute at issue here. Accordingly, should this Court accept review of the instant **case**, the State requests that the Court hold this case in abeyance pending the outcome of Burdick and Perkins, and that the **Court** dispense with the filing of merits briefs in this cause. Alternatively, the State requests that the instant case be consolidated with Perkins.

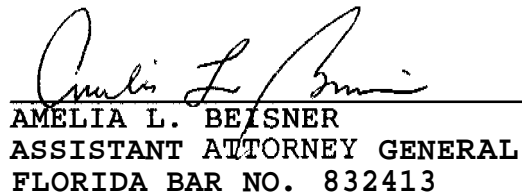
CONCLUSION

Should this Court decide to accept review of this case, the State respectfully requests that the Court hold the case in abeyance, dispensing with the filing of merits briefs, until the decisions in the pending cases of Busdick and Perkins are rendered.

Respectfully submitted,

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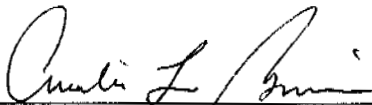

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing brief has been furnished by U.S. Mail to Glen P. Gifford, Assistant Public Defender, Leon County Courthouse, Fourth Floor North, 301 South Monroe Street, Tallahassee, Florida 32301, this 6th day of January, 1992.



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