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FILED

SID J. WHITE

APR 6 1992

CLERK, SUPREME COURT.

By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

JAMES F. BAKER, :
 :
 Petitioner, :
 :
 vs. :
 :
 STATE OF FLORIDA, :
 :
 Respondent. :
 :
 _____ :

Case No. 79,054

DISCRETIONARY REVIEW OF DECISION OF THE
DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

REPLY BRIEF OF PETITIONER ON THE MERITS

JAMES MARION MOORMAN
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

JOHN S. LYNCH
ASSISTANT PUBLIC DEFENDER
FLORIDA BAR NUMBER 268526

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ATTORNEYS FOR PETITIONER

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ARGUMENT

In that this Court has already resolved the question involved in this appeal, the Second District Court of Appeals has receded from the decisions which originally led to affirmance, and the State has apparently candidly conceded error in this case, this Court should reverse and remand so that the trial court can consider exercising the discretion it did not think it had. 1

CERTIFICATE OF SERVICE

1

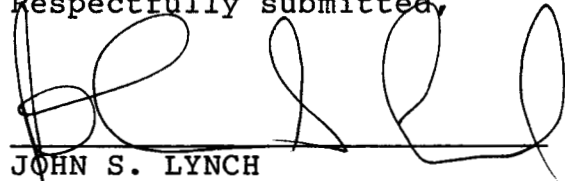
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CERTIFICATE OF SERVICE

I certify that a copy has been mailed to William I. Munsey, Jr., Suite 700, 2002 N. Lois Ave., Tampa, FL 33607, (813) 873-4730, on this 1st day of April, 1992.

Respectfully submitted,



JAMES MARION MOORMAN
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TENTH JUDICIAL CIRCUIT
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