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JAN 21 1992

CLERK, SUPREME COURT

IN THE SUPREME COURT OF FLORIDA

CASE NO. 79,135

Chf of Deput Clerk

GERALD DOWLING,

Petitioner,

vs.

THE STATE OF FLORIDA,

Respondent,

ON APPLICATION FOR DISCRETIONARY JURISDICTION

BRIEF OF RESPONDENT ON JURISDICTION

ROBERT A. BUTTERWORTH
Attorney General
Tallahassee, Florida

ANGELICA D. ZAYAS
Florida Bar #0822256
Assistant Attorney General
Department of Legal Affairs
401 N.W. 2nd Avenue
P.O. Box 013241
Miami, Florida 33101
(305) 377-5441

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INTRODUCTION

Petitioner was the defendant in the trial court and the appellant in the District Court of Appeal of Florida, Third District. Respondent, the State of Florida, was the prosecution in the trial court and the Appellee in the appellate court.

STATEMENT OF THE CASE AND FACTS

Respondent accepts the Statement of Case and Facts as presented on page one **and** two of Petitioner's brief as an accurate representation of the proceeding below.

QUESTION PRESENTED

WHETHER THE DECISION OF THE THIRD DISTRICT COURT OF APPEAL IS IN DIRECT AND EXPRESS CONFLICT WITH A DECISION OF ANOTHER COURT OF APPEAL. (Restated).

SUMMARY OF THE ARGUMENT

Because the Third District Court of Appeal relied on State v. Pardo, 582 So.2d 1225 (Fla. 3d DCA 1991) in support of its opinion in the instant case and Pardo is currently pending before this Honorable Court, Respondent agrees that there is express conflict authorizing jurisdiction in this Honorable Court.

ARGUMENT

THE DECISION OF THE THIRD DISTRICT COURT OF APPEAL IS IN CONFLICT WITH A DECISION OF ANOTHER COURT OF APPEAL, ALLOWING THIS COURT TO EXERCISE ITS JURISDICTION.
(Restated).

This Court has discretionary jurisdiction to **review** decisions of district courts of appeal that expressly and directly conflict with a decision of another district court of appeal on the same question of law. Art. V, § 3 (b)(3), Fla. Const.; Fla.R.App.P. 9.030 (a)(2)(A)(iv). A district court's per curiam decision without opinion citing as controlling authority a decision that is pending in this Court constitutes express conflict. State v. Lofton, 534 So.2d 1148 (Fla. 1988); Jollie v. State, 405 So.2d 418 (Fla. 1981).

The opinion of the Third District in the instant case cited State v. Pardo, 582 So.2d 1125 (Fla. 3d DCA 1991) in a per curiam decision affirming Petitioner's conviction below. (App. 1-2).

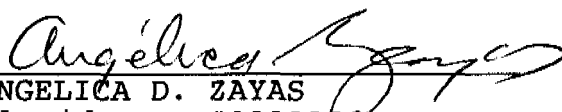
Pardo certified express and direct conflict with Kopko v. State, 577 So.2d 956 (Fla. 5th DCA 1991), and is presently pending review in this Court as Case Number 78,318 on the same issue of law. This being **so**, the State concedes that this Court has jurisdiction to review the instant case. Art. V, §3 (b)(3), Fla. Const.; Jollie, 405 So.2d 418.

CONCLUSION

WHEREFORE, based upon the foregoing reasons and authorities cited herein, Respondent **agrees** that conflict jurisdiction is vested in this Honorable Court.

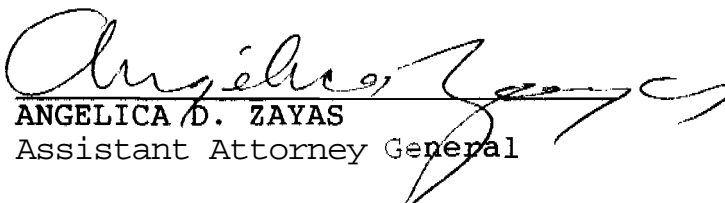
Respectfully submitted,

ROBERT A. BUTTERWORTH
Attorney General


ANGELICA D. ZAYAS
Florida Bar #0822256
Assistant Attorney General
Department of Legal Affairs
401 N. W. 2nd Avenue, Suite N921
P.O. Box 013241
Miami, Florida 33101
(305) 377-5441

CERTIFICATE OF SERVICE

I **HEREBY** CERTIFY that a true and correct copy of the foregoing BRIEF OF RESPONDENT ON JURISDICTION was furnished by mail to LOUIS CAMPBELL, Assistant Public Defender, Office of the Public Defender, 1351 N.W. 12th Street, Miami, Florida 33125 on this 17th day of January, 1992.


ANGELICA D. ZAYAS
Assistant Attorney General

/bfr