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FILED
SID J. WHITE
JAN 21 1992
CLERK, SUPREME COURT.
By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

CASE NO. 79,197

4th DCA Case No. 91-1404

MERLENE WALKER,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

ON PETITION FOR DISCRETIONARY REVIEW

BRIEF OF RESPONDENT ON JURISDICTION

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ISSUE

THIS COURT SHOULD NOT EXERCISE ITS
DISCRETIONARY JURISDICTION TO REVIEW THE
DECISION OF THE FOURTH DISTRICT COURT OF
APPEAL BELOW WHICH HAS CITED AS
CONTROLLING AUTHORITY SUBSEQUENT CASE
WHICH CERTIFIES THE IDENTICAL ISSUE TO
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PRELIMINARY STATEMENT

Petitioner was the defendant in the Criminal Division of the Circuit Court of the Seventeenth Judicial Circuit, in and for Broward County, Florida and the appellee in the Forth District Court of Appeal. Respondent was the prosecution and the appellant below.

In the brief, the parties will be referred to as they appear before this Honorable Court.

The following symbol will be used:

R = Record on Appeal

STATEMENT OF THE CASE AND FACTS

The Respondent accepts the Petitioner's statement of the facts and case for the limited purpose of this jurisdictional brief.

SUMMARY OF THE ARGUMENT

Under the rule set out in Jollie v. State, 405 So.2d 418 (Fla. 1981) this Court has jurisdiction to review a per curiam opinion if it cites as controlling authority a case that is currently pending review by this Court.

The decision in the present case cites as authority another decision of the Fourth District Court of Appeal, State v. Scates, 16 F.L.W. 2203 (Fla. 4th DCA August 21, 1991), Supreme Court Case No. 78,533. Jurisdiction on that case has not been accepted by this Court, therefore, Jollie is inapplicable. Consequently, Jollie does not provide the authority for which this Court may accept review.

ARGUMENT

ISSUE

THIS COURT SHOULD NOT EXERCISE ITS DISCRETIONARY JURISDICTION TO REVIEW THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL BELOW WHICH HAS CITED AS CONTROLLING AUTHORITY SUBSEQUENT CASE WHICH CERTIFIES THE IDENTICAL ISSUE TO THIS COURT AS A QUESTION OF GREAT PUBLIC IMPORTANCE.

In the instant case the Fourth District Court off Appeals declined to certify the question of law which it certified in Scates v. State, Case No. 78, 533. Since the Petitioner was unable to get the Fourth District Court of Appeals to certify the question, the Petitioner now seeks to invoke this Court's jurisdiction based on this Court's ruling in Jollie v. State, 405 So.2d 418 (Fla. 1981) and the State v. Brown, 475 So.2d 1 (Fla. 1985). In Jollie and Brown this Court ruled that jurisdiction for review could be accepted in cases which present the same question of law and are substantially the same factually as cases presently pending review in the Supreme Court even though the opinion involves a per curiam affirmance citing to an authority without further comment.

Jurisdiction was accepted in Jollie and Brown because this Court had already accepted jurisdiction in the case cited in the per curiam affirmance. However, in the instant case, this Court has not accepted jurisdiction in Scates v. State. Therefore, this case stands in opposition to Jollie and Brown. Since the Fourth District Court of Appeals has not certified a question of great public importance and this Court has not accepted

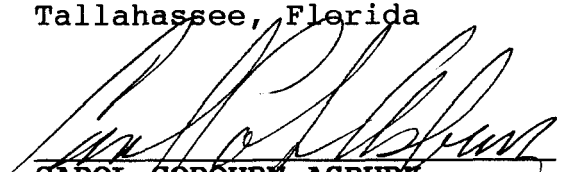
jurisdiction in Scates v. State, there is no basis for jurisdiction. Hence this Court lacks the constitutional authority to accept jurisdiction.

CONCLUSION

Based upon the foregoing, Respondent, the State of Florida, respectfully submits that this Honorable Court must summarily DENY the petition for review.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing "Brief of Respondent on Jurisdiction" has been forwarded by United States Mail to: JAMES O. WALKER, ESQUIRE, Clay Building, Suite 102, 1202 East Atlantic Boulevard, Pompano Beach, Florida 33060, this 16th day of January, 1992.



Of Counsel

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