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**FILED**

SID J. WHITE

MAY 29 1992

CLERK, SUPREME COURT

By   
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

HOWARD ORR,

Petitioner,

v.

CASE NO. 79,793

STATE OF FLORIDA,

Respondent.

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ON PETITION TO INVOKE DISCRETIONARY  
JURISDICTION TO REVIEW A DECISION OF  
THE FIFTH DISTRICT COURT OF APPEAL

RESPONDENT'S BRIEF ON JURISDICITON

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COUNSEL FOR RESPONDENT

STATEMENT OF THE CASE AND FACTS

Respondent accepts the Petitioner's Statement of the Case and Statement of the Facts.

SUMMARY OF ARGUMENT

In reaching its conclusion that the trial court properly used a Category 1 scoresheet at sentencing for convictions of attempted first and second degree murders, the Fifth District Court of Appeal noted conflict with the decision of the Fourth District Court of Appeal in Tarawneh v. State, 588 So.2d 1006 (Fla. 4th DCA 1991). However, the District Court did not certify direct conflict under Florida Rule of Appellate Procedure 9.030(a)(2)(A)(vi) or certify the question to be of great public importance under Rule 9.030(a)(2)(A)(v).

~~ARGUMENT~~  
ARGUMENT

THE DECISION OF THE DISTRICT COURT OF APPEAL IN THE CASE SUBJUDICE IS IN CONFLICT WITH THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL IN TARAWNEH V. STATE, 588 So.2d 1006 (Fla. 4th DCA 1991).

There is conflict between the decision of the Fourth District Court of Appeal in Tarawneh v. State, 588 So.2d 1006 (Fla. 4th DCA 1991) and the decisions of the Fifth District Court of Appeal in the case subjudice and that of the First District Court of Appeal in Hayles v. State, 17 FLW D422 (Fla. 1st DCA February 5, 1992), rehearing granted 17 FLW D960 (Fla. 1st DCA April 13, 1992). In Hayles, the First District certified conflict with Tarawneh and that case is presently pending before this Court in Case No, 79,743.

It should be noted that in the instant case, Petitioner was sentenced to seventeen years imprisonment to be followed by a period of probation using a Category 1 scoresheet. Under Category 9, the trial court could have imposed the same sentence. Perhaps this is why the Fifth District Court of Appeal did not certify this as a question of great public importance or as being in direct conflict with a decision of another district court of appeal under Florida Rules of Appellate Procedure 9.030(a)(2)(A)(v)-(vi).

CONCLUSION

Based on the arguments and authorities presented herein, Respondent would suggest that there is conflict between the decision of the Fifth District Court of Appeal in the case subjudice and the decision of the Fourth District Court of Appeal in Tarawneh v. State, 588 So.2d 1006 (Fla. 4th DCA 1991), but that resolution of this conflict is of minimal significance under the **facts** of the instant case.

Respectfully submitted,

ROBERT A. BUTTERWORTH  
ATTORNEY GENERAL



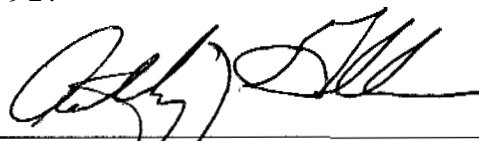
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CERTIFICATE OF SERVICE

I **HEREBY** CERTIFY that a true and correct copy of the above and foregoing Respondent's Brief on Jurisdiction has been furnished to Paolo G. Annino, Office of the Public Defender, Counsel for Petitioner, at 112-A Orange Avenue, Daytona Beach, Florida 32114, this 27<sup>th</sup> day of May, 1992.



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Anthony J. Golden  
Assistant Attorney General