

FILED

SID J. WHITE

MAY 26 1992

CLERK, SUPREME COURT

By  Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v.

Case No.: 79,883

ROBERT GLOVER,

Respondent.

JURISDICTIONAL BRIEF OF PETITIONER

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ISSUE

THE DECISION OF THE FIRST DISTRICT COURT OF APPEAL IN THIS CASE EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF THE THIRD DISTRICT COURT OF APPEAL IN LAMONT V. STATE, 17 F.L.W. D507 (FLA. 3D DCA FEB. 18, 1992), ON THE SAME QUESTION OF LAW.

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PRELIMINARY STATEMENT

Petitioner, the State of Florida, the prosecuting authority in the trial court and Appellee below, will be referred to in this brief as the State. Respondent, **ROBERT GLOVER**, the defendant in the trial court and Appellant below, will be referred to in this brief as Respondent. References to the three attached appendices will be noted by the symbol "A" followed by the appropriate number in parentheses.

JURISDICTIONAL STATEMENT

Article V, section 3(b)(3), of the Florida Constitution states, in pertinent part, the following:

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.

See also Fla.R.App.P. 9.030(a)(2)(A)(iv).

STATEMENT OF THE CASE AND FACTS

Robert Glover was sentenced as an habitual felony offender pursuant to Section 775.084, Fla. Stat. (1989), after being convicted of attempted first degree murder with a firearm, a life felony, and robbery with a firearm, a first degree felony punishable by a term of years not exceeding life imprisonment (A 1).

On appeal, the First District Court of Appeal affirmed the habitual offender sentence for robbery with a firearm, but reversed the habitual offender sentence for attempted first degree murder with a firearm because it had "previously held that section 775.084, Florida Statutes, **makes** no provision for habitual offender enhancement of a life felony." (A 1).

The State moved for rehearing and rehearing *en banc*, both of which were denied on May 20, 1992 (A 2). **The** State timely filed its notice to invoke this Court's discretionary jurisdiction, and this jurisdictional brief follows.

SUMMARY OF ARGUMENT

The decision of the First District Court of Appeal in the instant **case** directly and expressly conflicts with the decision of the Third District Court of Appeal in Lamont v. State, 17 F.L.W. D507 (Fla. **3d** DCA Feb. 18, 1992) (A 3), on the same question of law. The First District in **the** instant case held that the habitual felony offender statute was inapplicable to life felonies, even though the Court acknowledged that the Third District had reached a contrary result in a recent decision.

ARGUMENT

ISSUE

THE DECISION OF THE FIRST DISTRICT COURT OF APPEAL IN THIS CASE EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF THE THIRD DISTRICT COURT OF APPEAL IN LAMONT V. STATE, 17 F.L.W. D507 (FLA. 3D DCA FEB. 18, 1992), ON **THE** SAME QUESTION OF LAW.

The decision in the instant case expressly and directly conflicts with the decision of the Third District Court of **Appeal** in Lamont v. State, 17 F.L.W. D507 (Fla. 3d DCA Feb. 18, 1992), on the same question of law.

In Lamont, the Third District **held** that

life felonies are subject to the provisions of the habitual offender act, specifically including Section 775.084(4)(e), and accordingly [we] affirm the sentencing of the life felony defendants as habitual offenders. Although we agree with the above cited cases from the First, Fourth, and Fifth District Courts of Appeal holding that subsections 775.084(4)(a) and (b) do not apply to persons convicted of life felonies, the result we reach herein is different than that reached by the other District Courts of Appeal due to the fact that we find that the remaining portions of Section 775.084, specifically including subsection 775.084(4)(e), do apply to persons convicted of life felonies. To that extent, we certify the conflict that apparently exists between the result reached herein and the results reached by the other District Courts of Appeal.

(A 3 at D509) (emphasis in original).

In the instant case, the First District stated that

section 775.084, Florida Statutes, makes no provision for habitual offender enhancement of a life felony. The Third District Court, in Lamont v. State, . . . , has disagreed. . . . [The Third District's] argument is not altogether lacking in appeal. We must, however, follow the decisions of this court, and accordingly we vacate Glover's habitual offender sentence for a life felony

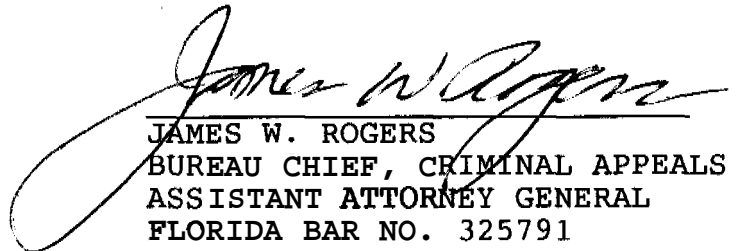
(A 1) (citations omitted). Thus, as acknowledged by the First District Court of Appeal, the instant case is in express and direct conflict with Lamont regarding applicability of the habitual offender statute to life felonies.

CONCLUSION

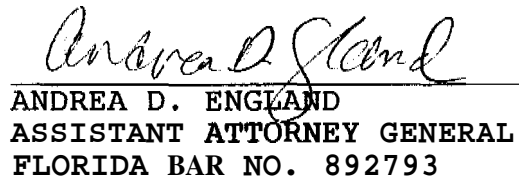
Based on the above-cited legal authorities and arguments,
the State respectfully requests this Court to exercise its
discretionary jurisdiction in this matter.

Respectfully submitted,

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CERTIFICATE OF SERVICE

1 HEREBY CERTIFY that a true and correct copy of the foregoing jurisdictional brief has been furnished by U.S. Mail to Nancy L. Showalter, Assistant Public Defender, Leon County Courthouse, Fourth Floor North, 301 South Monroe Street, Tallahassee, Florida 32301, this 26th day of May, 1992.

Andrea D. England

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APPENDICES

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