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FILED
SID J. WHITE
JUL 23 1992
CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

JOSEPH BURTON,
Petitioner,

v.

Case No. 80,071

STATE OF FLORIDA,
Respondent.

ON DISCRETIONARY REVIEW FROM THE DISTRICT
COURT OF APPEAL FOR THE SECOND DISTRICT
STATE OF FLORIDA

BRIEF OF RESPONDENT ON JURISDICTION

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SUMMARY OF THE ARGUMENT

Petitioner filed a motion to correct illegal sentence pursuant to Rule 3.800(a), Florida Rules of Criminal Procedure. The trial court denied Petitioner's motion. Petitioner filed an appeal to the District Court of Appeal for the Second District. The district court of appeal issued an opinion affirming the decision of the trial court citing McCall v. State, 583 So.2d 411 (Fla. 4th DCA 1991). This Court has accepted discretionary review in McCall supra. Therefore according to State v. Lofton, 534 So.2d 1148 (Fla. 1988) this Court has jurisdiction in the instant case.

ARGUMENT

ISSUE

WHETHER THIS COURT SHOULD ACCEPT JURI **DICTION**
IN THE INSTANT **CASE**.

Petitioner filed a motion to correct illegal sentence pursuant to Rule 3.800(a), Florida Rules of Criminal Procedure. The trial court denied Petitioner's motion. Petitioner filed an appeal to the District Court of Appeal for the Second District. The district court of appeal issued an opinion affirming the decision of the trial court citing McCall v. State, 583 So.2d 411 (Fla. 4th DCA 1991).¹ This Court **has** accepted discretionary review in McCall supra. Therefore according to State v. Lofton, 534 So.2d 1148 (Fla. 1988) this Court **has** jurisdiction in the instant case.

¹ The opinion mistakenly cited McCall as McCall v. State, 583 So.2d 411 (Fla. 2nd DCA 1991)

CONCLUSION

Based on the foregoing arguments and citations of authority, **the** appellee respectfully requests that this Honorable Court **aff** rm the judgment and sentence of the trial court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to JOSEPH BURTON, DC# 718725, Desoto Correctional Institution, P. O. Drawer, 1072, Arcadia, Florida 33821, this 21st day of July, 1992.

Brenda S. Taylor

OF COUNSEL FOR RESPONDENT