

FILED

SID J. WHITE

JUL 6 1992

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

CHARLES EUGENE COLEMAN,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

Case No.

80, 09

DISCRETIONARY REVIEW OF DECISION OF THE
DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

BRIEF OF PETITIONER ON JURISDICTION

JAMES MARION MOORMAN
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

TIMOTHY J. FERRERI
ASSISTANT PUBLIC DEFENDER
FLORIDA BAR NUMBER 774022

Public Defender's Office
Polk County Courthouse
P. O. Box 9000--Drawer PD
Bartow, FL 33830
(813) 534-4200

ATTORNEYS FOR PETITIONER

TOPICAL INDEX TO BRIEF

	<u>PAGE NO.</u>
STATEMENT OF THE CASE AND FACTS	1
SUMMARY OF THE ARGUMENT	3
ARGUMENT	4
ISSUE	
WHETHER THIS COURT SHOULD GRANT DISCRETIONARY CONFLICT JURISDICTION TO REVIEW THE ISSUE PENDING IN THE INSTANT CASE WHEN THE SECOND DISTRICT COURT OF APPEAL CITES A DECISION OF ANOTHER DISTRICT COURT IN DIRECT CONFLICT?	4
CONCLUSION	6
APPENDIX	
CERTIFICATE OF SERVICE	

TABLE OF CITATIONS

<u>CASES</u>	<u>PAGE NO.</u>
<u>Beaubrum v. State,</u> 595 So.2d 254 (Fla. 3d DCA 1992)	1, 4
<u>Burch v. State,</u> 558 So.2d 1 (Fla. 1990)	5
<u>Coleman v. State,</u> 91-01547 (Fla. 2d DCA June 12, 1992)	4
<u>Jamison v. State,</u> 583 So.2d 413 (Fla. 4th DCA 1991)	1, 4
<u>Johnson v. State,</u> 589 So.2d 1370 (Fla. 1st DCA 1991)	2, 4
 <u>OTHER A</u>	
Fla. R. App. P. 9.030	4
Fla. R. App. P. 9.120	6
§ 775.084, Fla. Stat. (1989)	3
§ 790.19, Fla. Stat. (1989)	1
§ 812.13 and 775.087, Fla. Stat. (1989)	1

STATEMENT OF THE CASE AND FACTS

On October 22, 1990, the State Attorney for the Tenth Judicial Circuit of the State of Florida, in and for Polk County, Florida, filed an information charging the Appellant, CHARLES EUGENE COLEMAN, with armed robbery in violation of sections 812.13 and 775.087, Florida Statutes (1989), and possession of a firearm by a convicted felon in violation of section 790.19, Florida Statutes (1989). The offenses allegedly occurred on October 2, 1990. On February 20, 1991, the Appellant entered a guilty plea to all charges. (R96)

On November 21, 1990, the Appellee filed its notice that it was seeking to have Appellant sentenced as a violent habitual felony offender. (R7) On March 19, 1991, the Appellant filed a motion to preclude the application of the habitual violent felony offender statute. (R10-12) On March 20, 1991, the trial court sentenced Appellant as a habitual violent felony offender to 12 years Florida State Prison with a 3 year minimum mandatory. For the offense of possession of a firearm by a felon, the trial court ordered Appellant be placed on 10 years probation consecutive to the 12 year prison sentence. (R37) On April 16, 1991, the Appellant filed his timely notice of appeal. (R74)

In an opinion filed June 12, 1992, the Second District Court of Appeal affirmed Petitioner's sentence. The court cited Beaubrum v. State, 595 So.2d 254 (Fla. 3d DCA 1992); Jamison v. State, 583 So.2d 413 (Fla. 4th DCA 1991), rev. denied, 591 So.2d 182 (Fla.

1991), and cited the contra decision in Johnson v. State, 589 So.2d
1370 (Fla. 1st DCA 1991).

SUMMARY OF THE ARGUMENT

In the Second District Court of Appeal, Petitioner argued his sentence as a habitual violent felony offender was improper because section 775.084, Florida Statutes (1989), Chapter 89-280, Laws of Florida violated the one subject rule of the Florida Constitution.

..

ARGUMENT

ISSUE

WHETHER THIS COURT SHOULD GRANT
DISCRETIONARY CONFLICT JURISDICTION
TO REVIEW THE ISSUE PENDING IN THE
INSTANT CASE WHEN THE SECOND DIS-
TRICT COURT OF APPEAL CITES A DECI-
SION OF ANOTHER DISTRICT COURT IN
DIRECT CONFLICT?

Petitioner respectfully requests this Honorable Court to grant discretionary jurisdiction of the instant case, Coleman v. State, 91-01547 (Fla. 2d DCA June 12, 1992). Article V, Section 3(b) (3) of the Florida Constitution and Florida Rule of Appellate Procedure 9.030 (a) (2) (a) (v) authorize this Court to review a decision of a district court of appeal which expressly and directly conflicts with a decision of another district court of appeal on the same question of law.

The Second District Court of Appeal cited the decision in Johnson v. State, 589 So.2d 1370 (Fla. 1st DCA 1991) which found the habitual violent felony offender statute, as amended in Ch 89-280, violated the single-subject rule of Article III, section 6, of the Florida Constitution. Chapter 89-280 included the subjects of the habitual offender statute, licensing of investigation agencies, private investigation agencies and repossession agencies.

The Second District Court of Appeal cited the decisions of Beaubrum v. State, 595 So.2d 254 (Fla. 3d DCA 1992) and Jamison v. State, 583 So.2d 413 (Fla. 4th DCA 1991), rev. denied, 591 So.2d 182) (Fla. 1991). The court in Jamison relied on this Court's

decision in Burch v. State, 558 So.2d 1 (Fla. 1990) to find the above statute did not violate the single-subject rule.

CONCLUSION

Based upon the foregoing authorities and argument, Petitioner respectfully requests this Honorable Court to grant discretionary conflict jurisdiction of the instant case, pursuant to Florida Rule of Appellate Procedure 9.120.

10

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

CHARLES EUGENE COLEMAN,)
)
 Appellant,)
)
 v.)
)
 STATE OF FLORIDA,)
)
 Appellee.)

CASE NO. 91-01547

Opinion filed June 12, 1992.

Appeal from the Circuit
Court for Polk County;
J. Tim Strickland, Judge.

James Marion Moorman, Public
Defender, and Timothy J.
Ferreri, Assistant Public
Defender, Bartow, for Appellant.

Robert A. Butterworth, Attorney
General, Tallahassee, and Erica
M. Raffel, Assistant Attorney
General, Tampa, for Appellee.

PER CURIAM.

Affirmed. See Beaubrum v. State, 595 So. 2d 254 (Fla.
3d DCA 1992); Jamison v. State, 583 So. 2d 413 (Fla. 4th DCA
1991), rev. denied, 591 So. 2d 182 (Fla. 1991); contra Johnson v.
State, 589 So. 2d 1370 (Fla. 1st DCA 1991).

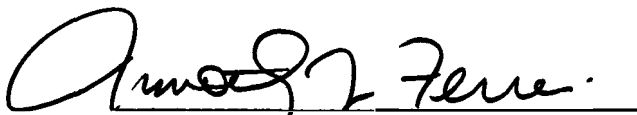
SCHOONOVER, C.J., and DANAHY and PATTERSON, JJ., Concur.

Received By
JUN 12 1992
Superior Court
Public Defenders Office

CERTIFICATE OF SERVICE

I certify that a copy has been mailed to Erica M. Raffel, Suite 700, 2002 N. Lois Ave., Tampa, FL 33607, (813) 873-4730, on this 2ND day of July, 1992.

Respectfully submitted,

A handwritten signature in cursive script, reading "Timothy J. Ferreri", written over a horizontal line.

JAMES MARION MOORMAN
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT
(813) 534-4200

TIMOTHY J. FERRERI
Assistant Public Defender
Florida Bar Number 774022
P. O. Box 9000 - Drawer PD
Bartow, FL 33830

TJF/lw