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FILED

SID J. WHITE

JUL 29 1992

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

JEROME RIVERS,

Petitioner,

v.

Case No. 80,141

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

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

KATHERINE V. BLANCO
Assistant Attorney General
Florida Bar No. 327832
2002 North Lois Avenue, Suite 700
Tampa, Florida 33607-2366
(813) 073-4739

COUNSEL FOR RESPONDENT

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SUMMARY OF THE ARGUMENT

In the instant case, the Second District Court affirmed the decision of the trial court, citing State v. Tripp, 591 So.2d 1055 (Fla. 2d DCA 1991), *review of certified question pending*, Tripp v. State, No.79,176. Since review currently is pending before this Court in Tripp, this Court has discretionary jurisdiction to accept review of the P.C.A. decision controlled by the cited authority.

ARGUMENT

ISSUE

WHETHER THIS COURT SHOULD EXERCISE ITS
DISCRETIONARY JURISDICTION TO REVIEW THE
INSTANT CASE.

In the instant case, the Second District Court issued a "citation P.C.A". In so doing, the Second District affirmed the decision of the trial court, citing State v. Tripp, 591 So.2d 1055 (Fla. 2d DCA 1991), *review of certified question pending*, Tripp v. State, No.79,176.

In Jollie v. State, 405 So.2d 418 (Fla. 1981), this Court held that a *per curium* decision without opinion which cites as controlling authority a decision that is pending review in this Court constitutes *prima facie* express conflict for purposes of jurisdiction. **Accord**, State v. Lofton, 534 So.2d 1148 (Fla. 1988). Thus, according to Jollie and Lofton, this Court has jurisdiction to review the decision in this case pursuant to Article V, section 3(b)(3), Florida Constitution.

CONCLUSION

Respondent respectfully requests that this Honorable Court affirm the judgment and sentence of the trial court.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

Katherine Blanco

KATHERINE V. BLANCO
Assistant Attorney General
Florida Bar No. 327832
2002 N. Lois Avenue, Suite 700
Tampa, Florida 33607-2366
(813) 873-4739

OF COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of **the** foregoing has been furnished by U. S. mail to the Office of the Public Defender, P. O. Box 9000, Drawer PD, Bartow, Florida 33830, this 27th day of July, 1992.

K. Blanco

OF COUNSEL FOR RESPONDENT