

IN THE SUPREME COURT OF FLORIDA

ROBERT LEE COON,

Petitioner,

vs.

Case No. 91-02863

STATE OF FLORIDA,

Respondent.

:

:

**FILED**

SID J. WHITE

JUL 10 1992

CLERK, SUPREME COURT

By \_\_\_\_\_  
Chief Deputy Clerk

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

JULIUS AULISIO  
ASSISTANT PUBLIC DEFENDER  
FLORIDA BAR NUMBER 0561304

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

ATTORNEYS FOR PETITIONER

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PRELIMINARY STATEMENT

Petitioner, Robert Coon, was the Appellant in the Second District Court of Appeal and the Defendant in the trial court. Respondent, the State of Florida, was the Appellee in the Second District Court of Appeal. The appendix to this brief contains a copy of the decision rendered by the Second District Court of Appeal on June 17, 1992.

STATEMENT OF THE **CASE AND FACTS**

On March 6, 1991, the State Attorney of the Tenth Judicial Circuit, in and for Hardee County, Florida filed an information charging Petitioner, Robert Lee Coon, with possession of child pornography in violation of section 827.071(5), Florida Statutes (1989).

The Honorable R. Earl Collins presided over the jury trial conducted on August 22, and 23, 1991. The jury returned a verdict of guilty **as** charged. Petitioner **was** sentenced on September 3, 1991 to ten years imprisonment **as** a habitual felony offender.

Petitioner timely filed his notice of **appeal** on September 6, 1991. On appeal he argued it **was** error to deny his motion in limine and to sentence him **as** an habitual felony offender. On June 17, 1992, the Second District Court of Appeal affirmed the judgment and sentence of the lower court, citing to 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).

SUMMARY OF THE ARGUMENT

The Second District Court of Appeal affirmed the lower court's ruling but noted conflict with the holding in Johnson v. State, 589 So.2d 1370 (Fla. 1st DCA 1991). Johnson has been accepted in this court for review under case numbers 79,150 and 79,204. The instant case should be accepted for review because conflict with Johnson has been demonstrated.

## ARGUMENT

The Second District Court of Appeal affirmed the lower court's ruling based on the decision 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). Beaubrum and Jamison held that section 775.084 Florida Statutes (1989), the habitual offender statute, does not violate the single subject rule. This holding is in direct conflict with Johnson v. State, 589 So.2d 1370 (Fla. 1st DCA 1991).

The holding in Johnson, which was certified to the Florida Supreme Court, applies to the factual situation in the instant **case**. The current charge for which Petitioner received a habitual sentence occurred on February 16, 1991. There was not a constitutionally valid habitual offender statute any time prior to May 1, 1991, that allowed use of out of state convictions. A decision on the constitutionality of the habitual offender statute will have a direct impact on Petitioner since he had only one prior in state felony conviction.

CONCLUSION

This court should take conflict jurisdiction of this case and reverse the decision of the Second District Court of Appeal.



APPENDIX

PAGE NO.

1. Opinion of Second District Court of Appeal  
dated June 17, 1992

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

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
SECOND DISTRICT

ROBERT LEE COON, )

Appellant,

v.

Case No. 91-02863

STATE OF FLORIDA,

Appellee.

---

Opinion filed June 17, 1992.

Appeal from the Circuit Court  
for Hardee County; R. Earl  
Collins, Acting Circuit Judge.

James Marion Moorman, Public  
Defender, and Julius Aulisio,  
Assistant Public Defender,  
Bartow, for Appellant.

Robert A. Butterworth, Attorney  
General, Tallahassee, and Sue R.  
Henderson, 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.


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CERTIFICATE OF SERVICE

I certify that a copy has been mailed to Sue R. Henderson, Suite 700, 2002 N. Lois Ave., Tampa, FL 33607, (813) 873-4730, on this 8<sup>th</sup> day of July, 1992.

Respectfully submitted,

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

  
\_\_\_\_\_  
JULIUS AULISIO  
Assistant Public Defender  
Florida Bar Number 0561304  
P. O. Box 9000 - Drawer PD  
Bartow, FL 33830

JA/lw