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FILED

SID J. WHITE

AUG 21 1992

CLERK, SUPREME COURT.

By *[Signature]*
Chief Deputy Clerk

IN THE SUPREME CWRT OF FLORIDA

WILLIE FRANK THOMAS,

Petitioner,

v.

CASE NO. 80,168

STATE OF FLORIDA,

Respondent.

_____ /

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

RESPONDENT'S BRIEF ON JURISDICTION

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SUMMARY OF THE ARGUMENT

The opinion of the Second District Court of Appeal does not expressly and directly conflict with the decisions of other district courts of appeal, because the par curiam decision contains no citation or written opinion. Accordingly, this Court has no subject matter jurisdiction to review this case.

ARGUMENT

THIS COURT IS WITHOUT SUBJECT MATTER JURISDICTION TO REVIEW THIS CASE BECAUSE THE PER CURIAM OPINION OF THE SECOND DISTRICT COURT OF APPEAL DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH THE DECISIONS OF OTHER DISTRICT COURTS OF APPEAL.

The Florida Constitution was amended in 1980 to provide that this Court "[m]ay review any decision of a district court of appeal . . . , that expressly and directly conflicts with a decision of another court of appeal or of the Supreme Court on the same question of law." Art. V. §3(b)(3), Florida Constitution. In discussing the amendment, this Court relied on the definitions of "express" and "expressly" contained in Webster's Third New International Dictionary (1961 ed. unab.). Jenkins v. State, 385 So.2d 1356 (Fla. 1980). "Express" is defined as "to represent in words;" "to give expression to." "Expressly" is defined as "in an express manner." Id. at 1359.

In order to have and express a direct conflict, the majority opinion in the case in which certiorari jurisdiction is sought must refer to the decision alleged to be in conflict on the same question of law.¹ Conflict between decisions must appear

State v. Whitfield, 487 So.2d 1045 (Fla. 1986); State v. Jackson, 478 So. 2d 1054 (Fla. 1985); Santiago v. State, 478 So.2d 47 (Fla. 1985); Hendrix v. State, 475 So. 2d 1218 (Fla. 1985); Waldon v. State, 483 So. 2d 101 (Fla. 5th DCA 1986); Torrey v. State, 482 So.2d 552 (Fla. 1986); White v. State, 489 So. 2d 115 (Fla. 1986); Kolbe v. State, 480 So. 2d 694 (Fla. 4th DCA 1985); Gann v. State, 459 So. 2d 1175 (Fla. 5th DCA 1984); Gallagher v. State, 476 So.2d 754 (Fla. 5th DCA 1985); Schmitt v. State, 458 So. 2d 1183 (Fla. 5th DCA 1984); State v. Meyer, 430 So.2d 440 (Fla. 1983).

within the four corners of the majority decision. Reaves v. State, 485 So. 2d 829, 830 (Fla. 1986). This Court has no subject-matter jurisdiction to hear a case, like the one at bar, in which the district court has rendered a per curiam affirmance, without citation or opinion. See The Florida Star v. B.J.F., 530 So.2d 286, 288 n. 3 (Fla. 1988); Jollie v. State, 405 So.2d 418, 420 (Fla. 1981). Consequently, discretionary review must be declined.

CONCLUSION

Based upon the foregoing reasons, arguments, and citations of authority, Respondent would pray that this Honorable Court refuse to exercise its discretionary jurisdiction to review this case.

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 Willie Frank Thomas, DOC # 104325, DeSoto Correctional Institution, P.O. Drawer 1072, Arcadia, Florida 33821, on this 17th day of August, 1992.

Michele Taylor _____

OF COUNSEL FOR RESPONDENT