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CLERK, SUPREME COURT
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IN THE SUPREME COURT OF FLORIDA

WILLIAM DAVID ALBRECHT, .

Petitioner ,

vs.

Case No 80427

STATE OF FLORIDA, :

Respondent ,

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

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PRELIMINARY STATEMENT

Petitioner, WILLIAM DAVID ALBRECHT, 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 appellate court on August 5, 1992.

STATEMENT OF THE CASE

On April 5, 1991, the State Attorney of the Twentieth Judicial Circuit in Collier County filed an information alleging that the Petitioner, WILLIAM DAVID ALBRECHT, attempted to purchase cocaine on or about March 15, 1991, in violation of section 893.13, Florida Statutes (Supp. 1990). The Honorable Charles T. Carlton, Circuit Judge, presided over Mr. Albrecht's trial by jury on August 15, 1991. The jury returned a verdict of guilty as charged. Also on August 15, 1991, the state filed notice of intent to seek sentencing as a habitual felony offender.

On August 19, 1991, after considering Mr. Albrecht's pre-sentence investigation and State exhibits pertaining to habitual offender qualifying offenses, the court adjudicated Mr. Albrecht guilty under section 893.13, and imposed a sentence of seven years in prison as a habitual felony offender. Mr. Albrecht's recommended guideline sentence called for community control or twelve to thirty months' incarceration, or a permitted prison term of up to three-and-one-half years. Defense counsel timely filed notice of appeal on August 19, 1991.

On appeal, Mr. Albrecht argued that because his crime occurred between October 1, 1989 and May 2, 1991, the trial court could not use his two out-of-state convictions to support a sentence as a habitual offender based on the holding in Johnson v. State, 589 So.2d 1370, 1371 (Fla. 1st DCA 1991) (Chapter 89-280, Laws of Florida, which amended the habitual offender provisions, violates the single subject rule). The Second District court of Appeal

affirmed the sentence on August 5, 1991, on the basis of McCall v. State, 583 So.2d 411 (Fla. 4th DCA 1991), jurisdiction accepted, 593 So.2d 1052 (Fla. 1992) (Supreme Court Case #79,536), which holds that Chapter 89-280 does not violate the single subject rule.

SUMMARY OF THE ARGUMENT

Jurisdiction of **this case should be** accepted on the **basis** that the instant decision presents an issue already pending before this **Court** on a decision expressly declaring **valid** a **state statute**.

ARGUMENT

ISSUE

WHETHER THE ISSUE IN Albrecht v. State, Case No. 91-02861 (Fla. 2d DCA Aug. 5, 1992), ASSERTING A SINGLE-SUBJECT RULE VIOLATION, IS PRESENTLY PENDING BEFORE THIS COURT IN ANOTHER CASE?

Petitioner contested the trial court's use of **two** out-of-state convictions for imposing a habitual offender sentence because Chapter 89-280, Laws of Florida violated the single subject requirement of Article 111, Section 6 of the Florida Constitution. The Second District Court of Appeal upheld the sentence on the basis of McCall v. State, 583 So.2d 411 (Fla. 4th DCA 1991), jurisdiction accepted, 593 So.2d 1052 (Fla. 1992) (Supreme Court Case #78,536). Jurisdiction of McCall was accepted on the basis that the Fourth District's decision expressly declared valid a state statute. Article V, § 3(b)(3), Fla. Const.; Fla. R. App. P. 9.030(a)(2)(A)(i). Inasmuch as this Court has the sentencing issue already before it, jurisdiction over Mr. Albrecht's case should be accepted. See, Jollie v. State, 405 So.2d 418 (Fla. 1981).

CONCLUSION

In light of the foregoing reasons, arguments, and authorities, Petitioner has demonstrated that the instant issue is presently pending before the Court so as to invoke discretionary review.

APPENDIX

PAGE NO.

1. Decision of **The District Court of Appeal of Florida, Second District**, Opinion filed August 5, 1992, Case No. 91-02861

A1

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

WILLIAM DAVID ALBRECHT,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

CASE NO. 91-02861

Opinion filed August 5, 1992.

Appeal from the Circuit
Court for Collier County;
Charles T. Carlton, Judge.

James Marion Moorman,
Public Defender, and
Jennifer Y. Fogle,
Assistant Public Defender,
Bartow, for Appellant.

Robert A. Butterworth,
Attorney General, Tallahassee,
and Davis G. Anderson,
Assistant Attorney General,
Tampa, for Appellee.

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PER CURIAM.

We affirm the defendant's conviction and habitual
offender sentence. See McCall v. State, 583 So. 2d 411 (Fla. 4th
DCA 1991). We direct the court to correct the judgment to

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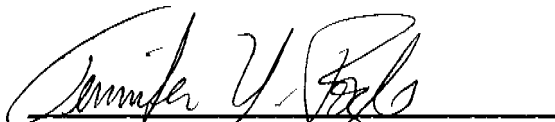
reflect the defendant was adjudicated guilty under sections
893.13(1)(a) and 777.04(1), Florida Statutes (1987).

LEHAN, C.J., RYDER and DANAHY, JJ., Concur.

CERTIFICATE OF SERVICE

I certify that a copy has been mailed to Davis G. Anderson, Suite 700, 2002 N. Lois Ave., Tampa, FL 33607, (813) 873-4730, on this 8th day of September, 1992.

Respectfully submitted ,



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