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OCT 1 1993

CLERK, SUPREME COURT

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IN THE SUPREME COURT  
STATE OF FLORIDA

WILLIAM DAVID ALBRECHT,

Petitioner,

v.

CASE NO. 80427

STATE OF FLORIDA,

Respondent.

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

STATE OF FLORIDA

BRIEF OF RESPONDENT ON JURISDICTION

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PRELIMINARY STATEMENT

In this brief, William David Albrecht will hereinafter be referred to as "Petitioner" and the State of Florida will be hereinafter, referred to as "Respondent," The record of appeal will be referenced by the symbol "R" followed by the appropriate number.

SUMMARY OF THE ARGUMENT

The court has taken jurisdiction over McCall v. State, 583 So.2d 411 (Fla. 4th DCA 1991) and therefore need not exercise jurisdiction over the present case.

ARGUMENT

ISSUE I

**WHETHER THE FLORIDA SUPREME COURT SHOULD  
REVIEW THE DECISION OF THE DISTRICT COURT OF  
APPEAL.**

Petitioner alleges that the court should accept jurisdiction over this case.

Respondent recognizes that the Florida Supreme Court has jurisdiction to review a per curiam affirmed decision without an opinion which cited a case pending review in the Florida Supreme Court. Jollie v. State, 405 So. 2d 418 (Fla. 1981), Trinidad v. State, 595 So.2d 50, 51 (Fla. 1992); Nelms v. State, 596 So.2d 441 (Fla. 1992).

Respondent contends however that this Court should not exercise its discretionary jurisdiction because the challenged amendment, Ch 89-280 is constitutional and does not violate Art 111, §6, Florida Constitution.

Further, this Court already has under review McCall v. State, 583 So.2d 411 (Fla. 4th DCA 1991), jurisdiction accepted, 593 So.2d 1052 (Fla. 1992). Since the court has accepted review of the above-styled case, there is no need to take jurisdiction over the present case because McCall v. State, and Albrecht v. State, are similar in fact. The rule of law enunciated by the court in McCall v. State, would be binding over the case at bar. Therefore, the Respondent contends that this Court should not accept jurisdiction.

CONCLUSION


Based upon the foregoing facts, arguments and authorities, this Court should decline to exercise its discretionary jurisdiction in this case.

Respectfully submitted,

ROBERT A. BUTTERWORTH  
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**PEGGY A. QUINCE**

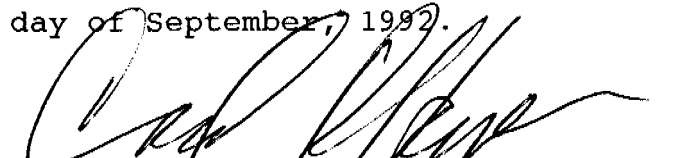
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Jennifer Y. Fogle, Assistant Public Defender, P. O. Box 9000 Drawer PD, Bartow, Florida 33830, on this 29 day of September, 1992.

  
\_\_\_\_\_  
OF COUNSEL FOR RESPONDENT