IN THE SUPREME COURT OF FLORIDA
TALLAHASSEE, FLORIDA

STANLEY EUGENE JOHNSON,

    Petitioner,

vs.

Case No. 80,808

STATE OF FLORIDA,

    Respondent.

_____/

DISCRETIONARY REVIEW FROM THE
FLORIDA DISTRICT COURT OF APPEAL
SECOND DISTRICT
IN LAKELAND, FLORIDA

BRIEF OF RESPONDENT ON JURISDICTION

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SUMMARY OF THE ARGUMENT

The opinion below is a per curiam affirmance with a reference to <u>Baxter v. State</u>, 599 So. 2d. 721 (Fla. 2d. DCA 1992). Respondent contends that conflict of holdings is not generated from the four corners of the opinion; and, that this Court's scope of review excludes such decisions.

ARGUMENT

ISSUE

WHETHER PETITIONER HAS DEMONSTRATED DIRECT AND EXPRESS CONFLICT OF HOLDINGS FROM THE FACE OF THE JOHNSON DECISION?

(As Restated by Respondent)

This brief addresses jurisdictional concepts. The decision below is a per curiam decision which cites Baxter v. State, 599 So. 2d. 721 (Fla. 2d. DCA 1992) as controlling precedent. There is no question but a per curiam decision without an opinion is not reviewable. See, Jenkins v. State, 385 So. 2d. 1356 (Fla. 1980) [where this Court interpreted Article V Section 3(b)(3) which sets forth that conflict must be express]. At the same time, this Court rendered Dodi Publishing Co. v. Editorial America, S.A., 385 So. 2d. 1369 (Fla. 1980). In Dodi, this Court acknowledged that it does not have jurisdiction to review a per curiam affirmance which merely cites a precedent, even if it could be argued that the precedent is in conflict with a decision of a sister appellate court or this Court.

Petitioner, in his brief, points out that Baxter is pending before this Court. However, in his brief, Petitioner does not cite to this Court's docket number. It is Respondent's position that Petitioner has failed to demonstrate from the four corners of the opinion below and from his brief that the controlling precedent is pending on review. Jollie v. State, 405 So. 2d. 418 (Fla. 1981), on remand, 407 So. 2d 1000 (Fla. 5th DCA 1981).
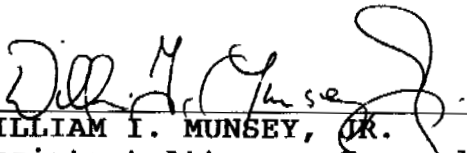
In the alternative, should this Court determine that the decision below is reviewable, then the "State" would request this Court to defer its review until <u>Baxter v. State</u>, Fla. No. 79,993 (briefs submitted pending decision) is determined.

CONCLUSION

WHEREFORE, based on the foregoing reasons, argument, and authority, Respondent would pray that this Court would determine that the instant "citation PCA" is not reviewable as Petitioner has failed to identify sufficiently controlling precedent pending before this Court; or, if this Court determines conflict then, Respondent requests that this Court defer its decision to review this case until Baxter v. State, Fla. No. 79,993 (briefs submitted pending decision) is determined.

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 Robert D. Rosen, Assistant Public Defender, Office of the Public Defender, P.O. Box 9000--Drawer PD, Bartow, FL 33830 on this _18th_ day of December, 1992.

OF COUNSEL FOR RESPONDENT

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