

*Accepted*

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SID J. WHITE

DEC 21 1992

CLERK, SUPREME COURT

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

IN THE SUPREME COURT OF FLORIDA

ERIC ENNIS RHOADS,

Petitioner,

v.

Case No. 80,851

STATE OF FLORIDA,

Respondent.

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

BRIEF OF RESPONDENT ON JURISDICTION

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/hb

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STATEMENT OF THE CASE AND FACTS

Respondent adopts Petitioner's Statement of the Case and of the Facts.

ARGUMENT

ISSUE I

THE LAW AUTHORIZING THE USE OF OUT OF STATE  
CONVICTIONS DID NOT VIOLATE THE SINGLE  
SUBJECT RULE.

Petitioner incorrectly asserts that review is pending in State v. Sheppard, 17 Fla. L. Weekly D 1960 (Fla. 2d DCA August 21, 1992) jurisdictional briefs filed Case No. 80,418 (Brief of Petitioner at 3.)

Although a per curiam decision without opinion citing a case that is pending review in the Supreme Court constitutes *prima facie* evidence of a conflict for jurisdictional purposes, State v. Lofton, 534 So. 2d 1148 (Fla. 1988), the phrase "pending review" means that this Court must have accepted the "citation PCA" case for review. Harrison v. Hyster Co., 515 So. 2d 1279 (Fla. 1987). The mere fact that a "citation PCA" case is pending on a notice to invoke discretionary jurisdiction, not yet ruled on, does not give rise to jurisdiction. Padovano, *Florida Appellate Practice*, §§2.10 (Vol. 2, 1991). No decision accepting jurisdiction has as yet been rendered by the Florida Supreme Court.

CONCLUSION

Based on the foregoing facts, arguments and authorities, this Court should decline to exercise discretionary jurisdiction because it has not accepted jurisdiction in State v. Sheppard, 17 Fla. L. Weekly, D 1960 (Fla. 2d DCA August 21, 1992). Petitioner incorrectly claims review is pending as the basis of his request that this Court should take jurisdiction in the instant 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 Stephen Krosschell, Assistant Public Defender, P.O. Box 9000-Drawer PD, Bartow, Florida 33830 this 16<sup>th</sup> day of December, 1992.

Ann G. Corcoran  
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