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CLERK, SUPREME COURT.

By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

LLOYD A. STEELE,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

CASE NO:

81,437

PETITIONER'S BRIEF ON JURISDICTION

LLOYD A. STEELE
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PETITIONER - PRO SE

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PRELIMINARY STATEMENT

Petitioner was the defendant in the criminal division of the Circuit Court of the Fifth Judicial Circuit, in and for Marion County, Florida, and the appellant in the Fifth District Court of Appeal. Respondent was the prosecution and the appellee below.

In the brief, the parties will be referred to as they appear before this Honorable Court.

STATEMENT OF THE CASE AND FACTS

Petitioner entered a plea of guilty to one count of robbery with deadly weapon. He was sentenced as an habitual offender. No objections were made at the time of sentencing, but after, Petitioner filed a motion to correct sentence, arguing that Fla. Stat. 775.084, as amended by Chapter 89-280, Laws of Florida, violated the single subject rule and was unconstitutional. The trial court had used out of state convictions to habitualize Petitioner. Petitioner's motion was denied, and a timely appeal followed.

The Fifth District Court of Appeal affirmed Petitioner's appeal citing State v. Johnson, 18 Fla.L. Weekly S55 (Fla. Jan. 14, 1993) as authority. (appendix)

This opinion was filed February 12, 1993. Petitioner then filed Notice of Intent to Invoke Discretionary Jurisdiction on March 8, 1993.

SUMMARY OF THE ARGUMENT

The Fifth District's holding in this case that Petitioner's sentence as an habitual offender pursuant to 775.084, Fla. Stat., as amended by Chapter 89-280, Laws of Florida (1989), conflicts with prior decisions of the First District Court of Appeal and a decision of this Court requiring resentencing for all whom were affected by the amendments of Chapter 89-280.

ARGUMENT

THE DECISION OF THE FIFTH DISTRICT COURT OF APPEAL
IN THE INSTANT CASE ALLOWING PETITIONER'S SENTENCE
AS AN HABITUAL OFFENDER TO STAND PURSUANT TO AN
UNCONSTITUTIONAL STATUTE CONFLICTS WITH PRIOR DE-
CISIONS OF THE FIRST DISTRICT COURT OF APPEAL AND OF
THIS COURT.

Petitioner seeks to establish this Court's "conflict" jurisdiction. Article V, Section 3(b)(3), Florida Constitution, Rule 9.030(a)(2)(A)(iv), Fla.R.App.P. The decision of the Fifth District Court of Appeal on the issue in question conflicts with these prior decisions: Johnson v. State, 589 So.2d 1370 (Fla. 1st DCA 1991); Pride v. State, 603 So.2d 24 (Fla. 1st. DCA 1992); and State v. Johnson, 18 Fla.L. Weekly S55 (Fla. Jan. 14, 1993).

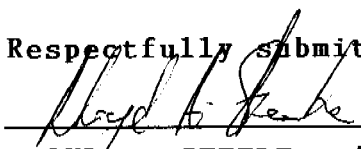
In Pride v. State, supra, by contrast, the First District held that defendant was entitled to be resentenced under prior version of statute, pursuant to which defendant could not qualify as habitual felony offender unless he had previously been convicted of two or more felonies in Florida. This Court in State v. Johnson, supra, held that a defendant affected by Chapter 89-280, Laws of Florida, amending 775.084 be remanded back to trial court for resentencing in accordance with valid laws in effect at the time of defendant's original sentencing.

The Fifth District's decision here affirming Petitioner's habitual sentence is contrary to Johnson and Pride. This Court should therefore review and reverse the decision.

CONCLUSION

Petitioner requests this Court to accept jurisdiction to review the merits of this case.

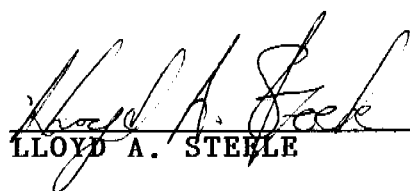
Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to the office of John W. Foster, Jr., Assistant Attorney General, 210 N. Palmetto Ave., Suite 447, Daytona Beach, Florida 32114 by U.S. Mail this 12th day of March, 1993.



LLOYD A. STEELE
Petitioner - Pro Se