## IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v.

RICKEY FAYE SANDERSON,

Respondent.

## PETITIONER'S BRIEF ON JURISDICTION

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COUNSEL FOR PETITIONER

/bsh

CLERK, SUPREME COURT By-**Chief Deputy Clerk** 81

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## SUMMARY OF THE ARGUMENT

This court has jurisdiction in the instant case because the Second District Court of Appeal acknowledged conflict with the First and Fourth districts. By explicitly acknowledging conflict the Second District's substituted decision constitutes prima facie direct and express conflict for purposes of jurisdiction.

#### ARGUMENT

THIS COURT HAS JURISDICTION TO REVIEW THE INSTANT CASE BECAUSE THE SECOND DISTRICT'S SUBSTITUTED OPINION EXPLICIT-LY ACKNOWLEDGED CONFLICT WITH THE FIRST AND FOURTH DISTRICTS AND THAT IS PRIMA FACIE DIRECT AND EXPRESS CONFLICT FOR PURPOSES OF JURISDICTION.

This court has authority as the highest court of the state to resolve legal conflicts created by the district courts of appeal. The Florida Constitution, art. V, §3(b)(3), authorizes the court to review a decision of a district court that expressly and directly conflicts with a decision of another district court of appeal.

On March 12, 1993 the Second District Court of Appeal granted the State of Florida's (Petitioner) motion for rehearing, withdrew its opinion which was filed on May 27, 1992, and substituted a new opinion. The substituted opinion acknowledged conflict with <u>Savory v. State</u>, 600 So. 2d 1 (Fla. 4th DCA 1992) and Smith v. State, 589 So. 2d 387 (Fla. 1st DCA 1991).

In <u>Jenkins v. State</u>, 385 So. 2d 1356, 1359 (Fla. 1980) this court defined "express" and "expressly." Express was defined to include "to represent in words" and "to give expression to." Expressly was defined to mean "in an express manner." The state contends that by explicitly acknowledging conflict with the First and Fourth Districts, the Second District's substituted decision constitutes prima facie direct and express conflict for purposes

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of jurisdiction. It expressly addresses a question of law within the four corners of the opinion itself. <u>The Florida Star v.</u> <u>B.J.F.</u>, 530 So. 2d 286, 288 (Fla. 1988), <u>probable jur. noted</u>, 488 U.S. 887 (1988). <u>See generally</u> Padovano, <u>Florida Appellate</u> Practice, §2.10 (1988 ed.).

It is not necessary that a district court explicitly identify conflicting district court opinions in its opinion in order to create an "express conflict." <u>Ford Motor Co. v. Kikis</u>, 401 So. 2d 1341, 1342 (Fla. 1981). However, in the instant case the district court did so.

The state respectfully requests that this Honorable Court accept jurisdiction based on direct and express conflict with the First and Fourth Districts so that the merits of the cause may be addressed.

#### CONCLUSION

Based upon the Second District's substituted opinion, as well as the foregoing arguments and authorities the state requests that this court accept jurisdiction and hear argument on the merits.

Respectfully submitted,

ROBERT A. BUTTERWORTH ATTORNEY GENERAL

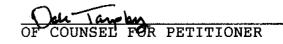
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COUNSEL FOR PETITIONER

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Cecilia A. Traina, Assistant Public Defender, Public Defender's Office, P.O. Box 9000, Drawer P.D., Bartow, Florida 33830 on this <u>174</u> day of March 1993.



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STATE OF FLORIDA,

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## PETITIONER'S BRIEF ON JURISDICTION

ROBERT A. BUTTERWORTH ATTORNEY GENERAL

DALE E. TARPLEY ASSISTANT ATTORNEY GENERAL Florida Bar No. 0872921

### APPENDIX

SECOND DISTRICT COURT OF APPEAL ORDER GRANTING MOTION FOR REHEARING AND SUBSTITUTED OPINION IN THE SECOND DISTRICT COURT OF APPEAL, LAKELAND, FLORIDA

MARCH 12, 1993

*k*,

STATE OF FLORIDA,

Petitioner,

v.

RICKEY FAYE SANDERSON,

Respondent.

CASE NO. 91-03055

100

BY ORDER OF THE COURT:

Upon consideration of the petitioner's motion for rehearing, clarification, or certification of conflict between District Courts of Appeal filed on June 5, 1992, it is

ORDERED that the motion for rehearing is granted. The opinion filed on May 27, 1992, is withdrawn, and the attached opinion is substituted therefor.

I HEREBY CERTIFY THE FOREGOING IS A TRUE COPY OF THE ORIGINAL COURT ORDER.

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WILLIAM A HADDAD, CLERK by co-

C:

Dale E. Tarpley, Assistant Attorney General, Tampa Cecilia A. Traina, Assistant Public Defender, Bartow

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

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IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

STATE OF FLORIDA,

Petitioner,

v.

RICKEY FAYE SANDERSON

Respondent.

CASE NO. 91-03055

Opinion filed March 12, 1993.

Petition for Writ of Certiorari to the Circuit Court for Sarasota County; James W. Whatley, Judge.

Robert A. Butterworth, Attorney General, Tallahassee, and Dale E. Tarpley, Assistant Attorney General, Tampa, for Petitioner.

James Marion Moorman, Public Defender, and Cecilia A. Traina, Assistant Public Defender, Bartow, for Respondent.

#### PER CURIAM.

We deny the petition for writ of certiorari. In so doing, we acknowledge conflict with <u>Savory v. State</u>, 600 So. 2d 1 (Fla. 4th DCA 1992) and <u>Smith v. State</u>, 589 So. 2d 387 (Fla. 1st DCA 1991).

CAMPBELL, A.C.J., HALL and BLUE, JJ., Concur.

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