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IN THE SUPREME COURT OF FLORIDA

**FILED**

SID J. WHITE

MAR 22 1993

CLERK, SUPREME COURT

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

STATE OF FLORIDA,

Petitioner,

v.

RICKEY FAYE SANDERSON,

Respondent.

FSC NO.

81,454

PETITIONER'S BRIEF ON JURISDICTION

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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 EXPLICITLY 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 Savory v. State, 600 So. 2d 1 (Fla. 4th DCA 1992) and Smith v. State, 589 So. 2d 387 (Fla. 1st DCA 1991).

In Jenkins v. State, 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

of jurisdiction. It expressly addresses a question of law within the four corners of the opinion itself. The Florida Star v. B.J.F., 530 So. 2d 286, 288 (Fla. 1988), probable jur. noted, 488 U.S. 887 (1988). See generally Padovano, Florida Appellate 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." Ford Motor Co. v. Kikis, 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,

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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 Cecilia A. Traina, Assistant Public Defender, Public Defender's Office, P.O. Box 9000, Drawer P.D., Bartow, Florida 33830 on this 18<sup>th</sup> day of March 1993.

Dale Tanenby  
OF COUNSEL FOR PETITIONER



IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v.

FSC No.

RICKY FAYE SANDERSON

Respondent.

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PETITIONER'S BRIEF ON JURISDICTION

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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, LAKE LAND, FLORIDA

MARCH 12, 1993

STATE OF FLORIDA, )

Petitioner, )

v. )

RICKEY FAYE SANDERSON, )

Respondent. )

CASE NO. 91-03055

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.

*William A. Haddad*  
WILLIAM A HADDAD, CLERK *by cs*

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.

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 Savory v. State, 600 So. 2d 1  
(Fla. 4th DCA 1992) and Smith v. State, 589 So. 2d 387 (Fla. 1st  
DCA 1991).

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

MAR 12 1992

APPELLATE COURT OF FLORIDA  
SECOND DISTRICT  
TAMPA