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APR 22 1993

CLERK, SUPREME COURT

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IN THE SUPREME COURT OF FLORIDA

FELICE JOHN VEACH,

Appellant/Defendant,

vs.

CASE NO. 81,544

STATE OF FLORIDA,

Appellee.

RESPONDENT'S BRIEF ON JURISDICTION

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I.

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE(S)</u>
<u>Preston v. State</u> , 411 So. 2d 297 (Fla. 3d DCA 1982).....	3, 4, 5
<u>State v. Rhoden</u> , 448 So. 2d 1013 (Fla. 1984).....	3, 4
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<u>RULES</u>	<u>PAGE(S)</u>
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<u>OTHER</u>	<u>PAGE(S)</u>
Fla. Const. Art. V, Section 3(b)(3)	

II.

PRELIMINARY STATEMENT

Petitioner, the State of Florida, the prosecuting authority in the trial court and appellee below, will be referred to in this brief as the state. Respondent, FELICE JOHN VEACH, the defendant in the trial court and appellant below, will be referred to in this brief as respondent.

III.

STATEMENT OF THE CASE AND FACTS

The Respondent accepts the Statement of the Case and Facts as set forth in the Petitioner's brief.

IV.

STATEMENT OF JURISDICTION

The Supreme Court of Florida has jurisdiction to review a decision of a district court of appeal that expressly and directly conflicts with a decision of the Supreme Court or another district court of appeal on the same point of law. Fla. Const. Art. V, Section 3(b)(3); Fla. R. App. P. 9.030(a)(2)(A)(iv).

v.

SUMMARY OF THE ARGUMENT

The case of Preston v. State, 411 So. 2d 297 (Fla. 3d DCA 1982), review denied, 418 So. 2d 1280 (Fla. 1982) have been effectively overruled by this court's decision in State v. Rhoden, 448 So. 2d 1013 (Fla. 1984). As such there is no conflict between Preston and Veach v. State, 18 Fla. L. Weekly D637 (Fla. 1st DCA March 4, 1993).

VI.

ARGUMENT

I.

WHETHER THE DECISION OF THE FIRST DISTRICT COURT OF APPEAL EXPRESSLY AND DIRECTLY CONFLICTS WITH DECISIONS OF THIS COURT OR OTHER DISTRICT COURTS OF APPEAL.

The First District Court of Appeals distinguished the Preston case by stating:

"In the Preston case cited by the State, the court effectively held that the Defendant implicitly waived the right to sentencing as a youthful offender by not seeking that designation and accepting the benefits of probation. However, the courts have since held that such implicit waivers are insufficient, and must rather be "knowing, intelligent, and manifest on the record". Therefore we do not follow Preston."

Veach v. State, 18 Fla. L. Weekly D637, 638 n.1 (Fla. 1st DCA March 4, 1993). Absent a manifest knowing and intelligent waiver on the record, it is reversible error to sentence a juvenile as an adult, even though the juvenile failed to object and even though a negotiated sanctions are entered without reference to Chapter 39. Walker v. State, 605 So. 2d 1341, 1341-42 (Fla. 1st DCA 1992). Failure to follow the provisions of Section 39.059(7)(c) Fla. Stat. requires a remand for resentencing regardless of the absence of an objection. State v. Rhoden, 448 So. 2d 1013, 1016 (Fla. 1984).

Preston has effectively been overruled by the Florida Supreme Court's decision in State v. Rhoden, 448 So. 2d 1013 (Fla. 1984).

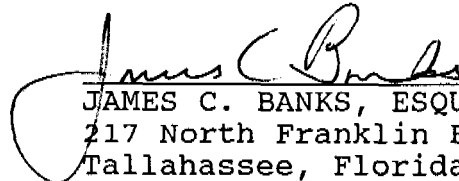
As such there is no conflict between Veach and Preston and this court should decline to exercise its jurisdiction to review the First District's decision in Veach v. State, 18 Fla. L. Weekly D637 (Fla. 1st DCA March 4, 1993).

VII.

CONCLUSION

Based on the above cited legal authorities and arguments, the respondent respectfully requests this Court to decline to exercise its discretionary jurisdiction in this matter.

RESPECTFULLY SUBMITTED,



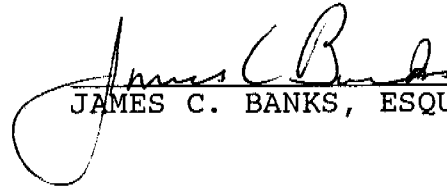
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VIII.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been forwarded by U.S. Mail to: JAMES ROGERS, ESQUIRE, Assistant Attorney General, Department of Legal Affairs, Appeals Division, The Capitol Building, Tallahassee, Florida 32301; and a copy of same has been furnished by UNITED STATES MAIL to the Appellant/Defendant, FELICE JOHN VEACH on this 22 day of April, 1993.



JAMES C. BANKS, ESQUIRE