

FILED

SID J. WHITE

DEC 13 1993

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

CASE NO. 82,612

WILLIAM ROBERTS,

Petitioner,

-vs-

THE STATE OF FLORIDA,

Respondent.

ON APPLICATION FOR DISCRETIONARY JURISDICTION

BRIEF OF RESPONDENT ON JURISDICTION

ROBERT A. BUTTERWORTH
Attorney General
Tallahassee, Florida

LESLIE SCHREIBER
Florida Bar #0841277
Office of Attorney General
Department of Legal Affairs
Post Office Box 013241
Miami, Florida 33101
(305) 377-5441

TABLE OF CONTENTS

INTRODUCTION..... 1

STATEMENT OF THE CASE AND FACTS..... 2

POINT ON APPEAL..... 3

SUMMARY OF THE ARGUMENT..... 4

ARGUMENT..... 5

THE DECISION OF THE THIRD DISTRICT COURT
OF APPEAL IS IN CONFLICT WITH A DECISION
OF ANOTHER COURT OF APPEAL, ALLOWING
THIS COURT TO EXERCISE ITS JURISDICTION.

CONCLUSION..... 6

CERTIFICATE OF SERVICE..... 6

TABLE OF CITATIONS

CASES

PAGE

Anthony Roberts v. State,
611 So. 2d 58 (Fla. 3d DCA 1992)..... 4-5

Graham v. State,
559 So. 2d 343 (Fla. 4th DCA 1990)..... 5

Jollie v. State,
405 So. 2d 418 (Fla. 1981)..... 5

State v. Lofton,
534 So. 2d 1148 (Fla. 1988)..... 5

OTHER AUTHORITIES:

Art. I, sec. 3(b)(3), Fla. Const..... 5

Fla. R. App. P. 9.030(a)(s)(A)(iv)..... 5

INTRODUCTION

The Petitioner, **ROBERT WILLIAMS**, was the defendant in the trial court and the Appellant in the Third District Court of Appeal. The Respondent, **THE STATE OF FLORIDA**, was the prosecution in the trial court and the Appellee in the Third District Court of Appeal.

STATEMENT OF THE CASE AND FACTS

Respondent accepts the Statement of Case and Facts as presented on page two of Petitioner's brief as an accurate representation of the proceeding below.

POINT ON APPEAL

WHETHER THE DECISION OF THE THIRD DISTRICT COURT OF APPEAL IS IN DIRECT AND EXPRESS CONFLICT WITH A DECISION OF ANOTHER COURT OF APPEAL? (Restated).

SUMMARY OF THE ARGUMENT

Because the Third District Court of Appeal relied on (Anthony) Roberts v. State, 611 So. 2d 58 (Fla. 3d DCA 1992), in support of its opinion in the instant case and Roberts is currently pending before this Honorable Court, Respondent agrees that there is express conflict authorizing jurisdiction in this Honorable Court.

ARGUMENT

THE DECISION OF THE THIRD DISTRICT COURT
OF APPEAL IS IN CONFLICT WITH A DECISION
OF ANOTHER COURT OF APPEAL, ALLOWING
THIS COURT TO EXERCISE ITS JURISDICTION.

This Court has discretionary jurisdiction to review decisions of district courts of appeal that expressly and directly conflict with a decision of another district court of appeal on the same question of law. Art. I, sec. 3 (b)(3), Fla. Const.; Fla. R. App. P. 9.030 (a)(s)(A)(iv). A district court's per curiam decision that is pending in this Court constitutes express conflict. State v. Lofton, 534 So. 2d 1148 (Fla. 1988); Jollie v. State, 405 So. 2d 418 (Fla. 1981).

The opinion of the Third District in the instant case cited (Anthony) Roberts v. State, 611 So. 2d 58 (Fla. 3d DCA 1992) in its per curiam decision affirming Petitioner's conviction below. (App).

Roberts certified express and direct conflict with Graham v. State, 559 So. 2d 343 (Fla. 4th DCA 1990), and is presently pending review in this Court as Case No. 81,182 on the same issue of law. This being so, the State concedes that this Court has jurisdiction to review the instant case. Art. I, sec. 3 (b)(3), Fla. Const.; Jollie, 405 So. 2d 418.

CONCLUSION

WHEREFORE, based upon the foregoing reasons and authorities cited herein, Respondent agrees that conflict jurisdiction is vested in this Honorable Court.

Respectfully submitted,

ROBERT A. BUTTERWORTH
Attorney General
Tallahassee, Florida

Leslie Schreiber

LESLIE SCHREIBER
Florida Bar #0841277
Assistant Attorney General
Office of the Attorney General
Department of Legal Affairs
P.O. Box 013241
Miami, Florida 33101
(305) 377-5441

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing BRIEF OF RESPONDENT was furnished by mail to BRUCE A. ROSENTHAL, Public Defender, Eleventh Judicial Circuit of Florida, 1320 N.W. 14th Street, Miami, Florida on this 11 day of December, 1993.

Leslie Schreiber

LESLIE SCHREIBER
Assistant Attorney General

mls/