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IN THE SUPREME COURT OF FLORIDA

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

MALCOLM BERNARD WILLIAMS,

Petitioner,

v.

CASE NO.: 82,811

STATE OF FLORIDA,

Respondent.

_____ /

JURISDICTIONAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF CITATIONS	ii
PRELIMINARY STATEMENT	1
STATEMENT OF THE CASE AND FACTS	2
SUMMARY OF ARGUMENT	2
ARGUMENT	3
<u>ISSUE</u>	3
REVIEW SHOULD BE DENIED OR ACCEPTED PURSUANT TO <u>JOLLIE V. STATE.</u>	
CONCLUSION	4
CERTIFICATE OF SERVICE	5

TABLE OF CITATIONS

<u>CASES</u>	<u>PAGE(S)</u>
<u>Jollie v. State,</u> 405 So. 2d 418 (Fla. 1981)	2,3
<u>Rock v. State,</u> 622 So. 2d 487 (Fla. 1st DCA 1993), <u>decision</u> <u>on jurisdiction pending, no. 82,530 (Fla. 1993)</u>	2,3
<u>Williams v. State,</u> ____ So. 2d _____, 18 Fla. L. Weekly D2449 (Fla. 1st DCA November 19, 1993)	1

IN THE SUPREME COURT OF FLORIDA

MALCOLM BERNARD WILLIAMS,

Appellant,

v.

CASE NO.: 82,811

STATE OF FLORIDA,

Appellee.

_____ /

JURISDICTIONAL BRIEF OF RESPONDENT

PRELIMINARY STATEMENT

Petitioner seeks review of the decision of the First District Court of Appeal in Williams v. State, ____ So. 2d ____, 18 Fla. L. Weekly D2449 (Fla. 1st DCA November 19, 1993) (opinion on motion for rehearing or clarification), attached hereto as Exhibit "A".

Petitioner, defendant/appellant below, will be referred to herein as "Petitioner." Respondent, the State of Florida, will be referred to herein as either "Respondent" or "the State."

STATEMENT OF THE CASE AND FACTS

No facts were set forth in the opinion below.

SUMMARY OF ARGUMENT

Petitioner has missed the legal issue entirely. The question of whether this Court should exercise discretionary conflict jurisdiction turns entirely on whether the Court accepts or denies review in Rock v. State, 622 So. 2d 487 (Fla. 1st DCA 1993), decision on jurisdiction pending, No. 82,530 (Fla. 1993). If Rock is accepted, this case should be accepted; if Rock is denied, this case should be denied. Jollie v. State, 405 So. 2d 418 (Fla. 1981).

ISSUE PRESENTED

REVIEW SHOULD BE DENIED OR ACCEPTED
PURSUANT TO JOLLIE V. STATE.

The district court opinion in this case merely affirmed the actions of the trial court and cited to Rock v. State, 622 So. 2d 487 (Fla. 1st DCA 1993), decision on jurisdiction pending, no. 82,530 (Fla. 1993), attached hereto as Exhibit "B". The state opposes review of Rock because it does not present direct and express conflict. See, state's answer brief on jurisdiction in Rock.

Petitioner's brief here misses the issue entirely. If review is granted in Rock, review should be granted here; if review is denied in Rock, review must be denied here. See, Jollie v. State, 405 So. 2d 418 (Fla. 1981) (Florida Supreme Court will accept discretionary review of "citation PCA," but only if citation is currently pending review or has been previously reversed).


As this is written, the Court has not decided whether to accept or reject Rock. Similarly, the jurisdictional decision here should be temporarily withheld.

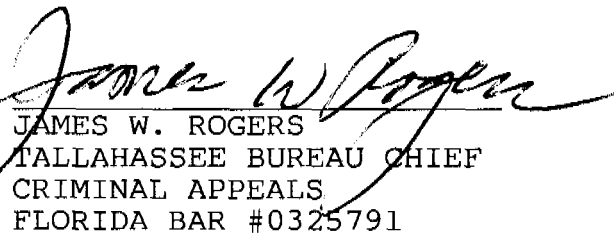
CONCLUSION

Respondent urges this Court to decline jurisdiction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been forwarded by U.S. Mail to Kathleen Stover, Assistant Public Defender, Leon County Courthouse, Suite 401, 301 South Monroe Street, Tallahassee, Florida 32301, this 15th day of December, 1993.


BRADLEY R. BISCHOFF
Assistant Attorney General