

045
FILED

SID J. WHITE

MAR 25 1994

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

RYAN LEE CHEEK,

Petitioner,

v.

CASE NO. 83,279

STATE OF FLORIDA,

Respondent.

RESPONDENT'S BRIEF ON JURISDICTION

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

ANTHONY J. GOLDEN
ASSISTANT ATTORNEY GENERAL
Fla. Bar #162172
444 Seabreeze Blvd.
5th Floor
Daytona Beach, FL 32118
(904) 238-4990

COUNSEL FOR RESPONDENT

TABLE OF CONTENTS

PAGES:

TABLE OF AUTHORITIES.....ii
STATEMENT OF THE CASE.....1
SUMMARY OF ARGUMENT.....2

ARGUMENT

THIS COURT MAY EXERCISE ITS
DISCRETIONARY JURISDICTION TO REVIEW
THE FIFTH DISTRICT COURT OF APPEAL'S
PER CURIAM AFFIRMANCE OF
PETITIONER'S JUDGMENT AND SENTENCE.....3
CONCLUSION.....4
CERTIFICATE OF SERVICE.....4

TABLE OF AUTHORITIES

CASES:

PAGES:

Jollie v. State,
405 So. 2d 418 (Fla. 1981).....3

Jones v. State,
619 So. 2d 418 (Fla. 5th DCA 1993).....3

STATEMENT OF THE CASE

Solely for purposes of the jurisdictional issue before this Court, Respondent accepts Petitioner's Statement of the Case and Facts.

SUMMARY OF ARGUMENT

This Court may exercise its discretionary jurisdiction to review a per curiam affirmance from a District Court of Appeal which cites as controlling authority a case pending review in the Florida Supreme Court.

ARGUMENT

THIS COURT MAY EXERCISE ITS
DISCRETIONARY JURISDICTION TO REVIEW
THE FIFTH DISTRICT COURT OF APPEAL'S
PER CURIAM AFFIRMANCE OF
PETITIONER'S JUDGMENT AND SENTENCE.

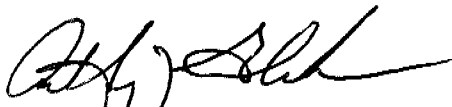
Petitioner's conviction and sentence were affirmed per curiam citing Jones v. State,. 619 So. 2d 418 (Fla. 5th DCA 1993). That case is currently pending before this Court in Florida Supreme Court Case No. 81,970. In that case, the briefs have been filed and oral argument was held in February, 1994. This Court may exercise its discretionary jurisdiction to review the District Court's per curiam affirmance. See Jollie v. State, 405 So. 2d 418 (Fla. 1981).

CONCLUSION

Based on the arguments and authorities presented herein, Respondent would assert that this Honorable Court has jurisdiction to review the per curiam affirmance of Petitioner's conviction and sentence.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL




ANTHONY J. GOLDEN
ASSISTANT ATTORNEY GENERAL
Fla. Bar #162172
444 Seabreeze Blvd.
5th Floor
Daytona Beach, FL 32118
(904) 238-4990

COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Repondent's Brief on Jurisdiction has been delivered to Daniel J. Schafer, Esquire, Office of the Public Defender, Counsel for Petitioner, 112 Orange Avenue, Suite A, Daytona Beach, Florida 32114, this 23 day of March, 1994.



Anthony J. Golden
Assistant Attorney General

IN THE SUPREME COURT OF FLORIDA

RYAN LEE CHEEK,

Petitioner,

v.

CASE NO. 80,279

STATE OF FLORIDA

Respondent.

APPENDIX TO RESPONDENT'S BRIEF ON JURISDICTION

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

ANTHONY J. GOLDEN
ASSISTANT ATTORNEY GENERAL
Fla. Bar #162172
210 N. Palmetto Ave.
Suite 447
Daytona Beach, FL 32114
(904) 238-4990

COUNSEL FOR RESPONDENT

INDEX TO APPENDIX

DOCUMENT

EXHIBIT

FIFTH DCA OPINION.....I

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JANUARY TERM 1994

✓ 92-3117
DS

NOT FINAL UNTIL THE TIME EXPIRES
TO FILE REHEARING MOTION, AND,
IF FILED, DISPOSED OF.

RYAN LEE CHEEK,

Appellant,

v.

CASE NO. 92-3117 ✓

STATE OF FLORIDA,

Appellee.

RECEIVED

JAN 28 1994

**PUBLIC DEFENDER'S OFFICE
7th CIR. APP. DIV.**

Opinion filed January 28, 1994 ✓

Appeal from the Circuit Court
for Brevard County,
Martin Budnick, Judge.

James B. Gibson, Public Defender, and
Daniel J. Schafer, Assistant Public Defender,
Daytona Beach, for Appellant.

Robert A. Butterworth, Attorney General,
Tallahassee, and Anthony J. Golden,
Assistant Attorney General,
Daytona Beach, for Appellee.

PER CURIAM.

AFFIRMED.

See Jones v. State, 619 So. 2d 418 (Fla. 5th DCA 1993).

HARRIS, C. J., DAUKSCH and GOSHORN, JJ., concur.