IN THE SUPREME COURT OF FLORIDA

CHARLIE BROWN, JR.,

Petitioner,

vs. Case No. 83,511

STATE OF FLORIDA,

Respondent.

RESPONDENT'S BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

Petitioner, Charlie Brown, Jr., 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

Respondent accepts Petitioner's statement of the case and facts.

SUMMARY OF THE ARGUMENT

ISSUE I: Jurisdiction in this case was based on this Court's acceptance of jurisdiction in Rock v. State, Case No. 82,530, pursuant to an alleged conflict between district courts of appeal. This Court recently decided Rock adversely to Petitioner. Because the basis for review no longer exists, this Court should summarily affirm the instant case on the basis of Rock.

ISSUE II: Petitioner is attempting here to raise an issue which was not raised below on direct appeal. Because there is no appellate decision on this point to review, this Court should dispose of the instant case with a summary affirmance.

ISSUE III: Petitioner is again attempting to raise for the first time an issue which was not raised below on direct appeal. Because there is no appellate decision on this point to review, this Court should dispose of the instant case with a summary affirmance.

ISSUE IV: Petitioner is yet again attempting to raise an issue which was not raised below on direct appeal. Because there is no appellate decision on this point to review, this Court should dispose of the instant case with a summary affirmance.

ARGUMENT

ISSUE I

WHETHER THE TRIAL COURT ERRED IN CONDUCTING SEQUENTIAL JURY SELECTION FOR PETITIONER'S CASE AND OTHER UNRELATED CASES INVOLVING OTHER DEFENDANTS.

The question of sequential jury selection has been decided adversely to Petitioner in Rock v. State, 19 Fla. L. Weekly S333 (Fla. Case No. 82,530, June 23, 1994), as Petitioner candidly acknowledges in his merits brief. It would thus appear that because this Court granted jurisdiction in the instant case based on "conflict" between the First District's decision in Rock and the Third District's decision in Johnson,[1] and because this Court has already resolved the "conflict" , there is no longer a reason for this Court to review the instant case other than to issue a summary affirmance.

This Court has held that it will not address issues beyond the scope of its jurisdiction based on conflict. State v. Gibson, 585 So. 2d 285 (Fla. 1991). Similarly, this Court has recognized that it need not address additional issues beyond the certified question which a petitioner raises in its brief. Gallagher v. State, 597 So. 2d 767 (Fla. 1991); Stephens v. State, 572 So. 2d 1387 (Fla. 1991). These precepts become even more compelling when the issue upon which jurisdiction was granted becomes moot by virtue of a subsequent decision of this Court, as in the instant case.

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[1] Johnson v. State, 600 So. 2d 32 (Fla. 3d DCA 1992).

Accordingly, Respondent respectfully urges this Court to dispose of the instant case by issuing a summary affirmance citing to this Court's opinion in Rock, supra.

ISSUE II

WHETHER THE TRIAL COURT ERRED IN RECLASSIFYING ROBBERY WITH A MASK FROM A SECOND-DEGREE FELONY TO A FIRST-DEGREE FELONY

The instant case should be summarily affirmed on the basis of Rock v. State, supra. Despite the fact that jurisdiction in this case was based on an issue already decided adversely to Petitioner, he is attempting to boldly go where no court has gone before and bootstrap as his Issue II an issue which was not even raised in the District Court below.

Under the Florida Constitution, Article V, Section 3, this Court may review decisions of the district courts of appeal under certain limited circumstances. It therefore follows that when an issue has not been presented to the district court of appeal and when, as a consequence, the district court has not been given the opportunity to render a decision on the issue in Petitioner's case, there is no "decision" on the issue for this Court to review. Accordingly, because Petitioner did not present the argument contained in his Issue II to the First District, and because the First District did not render a decision on the issue, this Court should refrain from addressing Petitioner's Issue II.

The requirement that a party must obtain a decision from the district court of appeal in order to seek review of an issue in this Court corresponds to Florida's constitutional scheme in which the district courts are courts of final appellate jurisdiction and this Court's appellate review is limited. In Jenkins v. State, 385

So. 2d 1356 (Fla. 1980), this Court recognized the broad appellate authority vested in the district courts, as well as the Court's own limited ability to review the decisions of the district courts:

> (U)nder the constitutional plan the powers of this Court to review decisions of the district courts of appeal are limited and strictly prescribed. It was never intended that the district courts of appeal should be intermediate courts. The revision and modernization of the Florida judicial system at the appellate level was prompted by the great volume of cases reaching the Supreme Court and the consequent delay in the administration of justice. The new article embodies throughout its terms the idea of a Supreme Court which functions as a supervisory body in the judicial system for the State, exercising appellate power in certain specified areas essential to the settlement of issues of public importance and the preservation of uniformity of principle and practice, with review by the district courts in most instances being final and absolute.
>
> To fail to recognize that these are courts primarily of final appellate jurisdiction and to allow such courts to become intermediate courts of appeal would result in a condition far more detrimental to the general welfare and the speedy and efficient administration of justice than that which the system was designed to remedy. [Citations omitted].

Id. at 1357 (emphasis supplied)(quoting Ansin v. Thornton, 101 So. 2d 808, 810 (Fla. 1958)).

The acceptance of jurisdiction on a particular question of law, as happened in the instant case, simply is not a constitutional authorization, or invitation, for the parties to raise any other issues they may desire, particularly when those issues were not presented to the district court on direct appeal. This Court has stated that it has the discretion to consider ancillary issues properly raised and argued before it once it has accepted jurisdiction over a case. See, e.g., Trushin v. State,

425 So. 2d 1126 (Fla. 1982), and State v. Thompson, 413 So. 2d 757 (Fla. 1982), where this Court refused to consider other issues, and Savoie v. State, 422 So. 2d 308, 310 (Fla. 1982)(closely related issue), and Tillman v. State, 471 So. 2d 32 (Fla. 1985)(different issue), where this Court granted review of other issues. In Trushin, this Court stated:

> (I)ssue 5, concerning failure to prove the corpus delicti, was rejected by the district court and was not included within the issues certified in the district court's opinion. While we have the authority to entertain issues ancillary to those in a certified case, we recognize the function of the district courts as courts of final jurisdiction and will refrain from using that authority unless those issues affect the outcome of the petition after review of the certified case.

Id. at 1130 (citation omitted).

The State has no quarrel with this Court's exercise of its discretion to entertain ancillary issues decided by the district court which are directly related to the issue which was the basis for jurisdiction (although clearly no such issues appear in the instant case). This authority , however, should not be abused by converting a constitutional petition for review of a particular question of law into an avenue by which a party may seek direct review of an issue which the party did not ask the district court of appeal to decide. Such a broad range of review undercuts the existing limitations on this Court's jurisdiction and wholly fails to recognize the status of the district courts of appeal as courts of final appellate jurisdiction. Petitioner therefore has no right to seek review in this Court of an alleged error which he did not

present to the First District, and the State will not address this issue on the merits unless ordered to do so by this Court.

ISSUE III

WHETHER THE TRIAL COURT ERRED IN ENTERING JUDGMENTS AND SENTENCES FOR BOTH ROBBERY AND THEFT ARISING OUT OF THE SAME EPISODE

Once again, the issue here presented is presented for the first time. As the District Court below was never given the opportunity to address this issue, this Court should not address it either for the reasons set forth in Issue II, supra.

ISSUE IV

WHETHER THE TRIAL COURT ERRED IN ENTERING CONSECUTIVE HABITUAL VIOLENT FELONY OFFENDER SENTENCES FOR BOTH ROBBERY AND THEFT ARISING OUT OF THE SAME EPISODE.

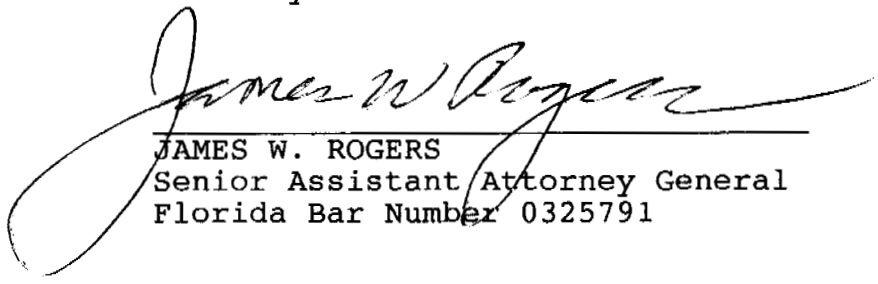
Once again, the issue here presented is presented for the first time. As the District Court below was never given the opportunity to address this issue, this Court should not address it either as there is no appellate decision to review on this point. For the reasons set forth in Issue II , supra, the instant case should be summarily affirmed.

CONCLUSION

Based on the foregoing arguments and citations of legal authorities, Respondent respectfully urges this Honorable Court to summarily affirm the decision of the First District Court of Appeal in this case.

Respectfully submitted,

ROBERT A. BUTTERWORTH
Attorney General



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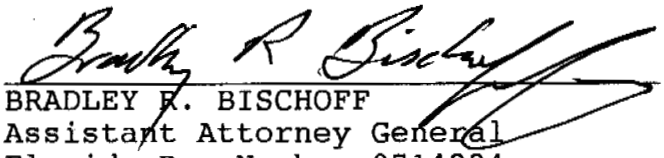

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing RESPONDENT'S BRIEF ON THE MERITS has been furnished by U.S. Mail to **MR. P. DOUGLAS BRINKMEYER**, Assistant Public Defender, Office of the Public Defender, Second Judicial Circuit of Florida, Leon County Courthouse, Fourth Floor North, 301 South Monroe Street, Tallahassee, Florida 32301, this 13th day of July, 1994.

BRADLEY R. BISCHOFF