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**FILED**

SID J. WHITE

MAY 25 1994

CLERK, SUPREME COURT

By \_\_\_\_\_  
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

RONALD L. PETIT, )  
 )  
Petitioner, )  
 )  
versus )  
 )  
STATE OF FLORIDA, )  
 )  
Respondent. )  
\_\_\_\_\_ )

S.C.T. CASE NO. *83,698*

**ON DISCRETIONARY REVIEW FROM  
THE FIFTH DISTRICT COURT OF APPEAL**

**PETITIONER'S BRIEF ON JURISDICTION**

JAMES B. GIBSON  
PUBLIC DEFENDER  
SEVENTH JUDICIAL CIRCUIT

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TABLE OF CITATIONS

CASES CITED:

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OTHER AUTHORITIES:

Section 39.061, Florida Statutes (1991)	1
Rule 9.030(a)(2)(iv), Florida Rule of Appellate Procedure	2, 3

STATEMENT OF THE CASE AND FACTS

The petitioner, Ronald L. Petit, was charged under section 39.061, Florida Statutes (1991), with escape from a juvenile facility, on September 16, 1992. By the time of the escape, the First District Court of Appeal had declared section 39.061 unconstitutional in D.P. v. State, 597 So. 2d 952 (Fla. 1st DCA 1992). The new statute that repairs the constitutionality infirmities of section 39.061, became effective October 1, 1992.

The petitioner brought an appeal from his conviction for escape, and on April 8, 1994, the Fifth District Court issued a per curiam affirmance, citing as authority B.H. v. State, 622 So. 2d 615 (Fla. 5th DCA 1993). Discretionary review of B.H. v. State is currently pending as Supreme Court Case No. 82,361.

The petitioner files herewith his brief on jurisdiction.

SUMMARY OF THE ARGUMENT

Petitioner submits that pursuant to Florida Rule of Appellate Procedure 9.030(a)(2)(iv), this court has jurisdiction to review the decision of the district court in his case, since the district court cites as authority for its ruling a case which is in conflict with the decisions of other district courts and whose review by this court is pending.

### ARGUMENT

THE FLORIDA SUPREME COURT HAS JURISDICTION TO REVIEW THIS CASE, BECAUSE IT HAS ACCEPTED JURISDICTION OF THE CASE ON WHICH THE DISTRICT COURT OF APPEAL DECISION IN THIS CASE RELIES.


The Fifth District Court cited B.H. v. State, 622 So. 2d 615 (Fla. 5th DCA 1993), as authority for its affirmance of petitioner's conviction for escape from a juvenile detention facility under section 39.061, Florida Statutes (1991). The B.H. decision is in conflict with State v. Davis, 619 So. 2d 517 (Fla. 4th DCA 1993); State v. Brower, 608 So. 2d 536 (Fla. 2d DCA 1992); and D.P. v. State, 597 So. 2d 952 (Fla. 1st DCA 1992). In addition, review by this court of the decision of the Fifth District Court in B.H. is pending, as Florida Supreme Court Case No. 82,361. Therefore, petitioner submits that under Florida Rule of Appellate Procedure 9.030(a)(2)(iv) and Jollie v. State, 405 So. 2d 418 (Fla. 1981), this court may exercise its discretionary jurisdiction to review the decision of the Fifth District Court in this case.

CONCLUSION

Based upon the argument and the authorities set forth herein, petitioner requests that this honorable court accept jurisdiction to review the decision of the district court of appeal in this case.

Respectfully submitted,

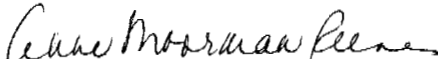
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CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon the Honorable Robert A. Butterworth, Attorney General, 444 Seabreeze Boulevard, Fifth Floor, Daytona Beach, Florida 32118, in his basket at the Fifth District Court of Appeal; and mailed to Ronald L. Petit, 39 Court Park, West Hartford, Connecticut 06119, on this 19th day of May, 1994.

  
\_\_\_\_\_  
ANNE MOORMAN REEVES  
ASSISTANT PUBLIC DEFENDER





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IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT  
JANUARY TERM 1994

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

RONALD PETIT,

Appellant,

v.

CASE NO. 93-247

STATE OF FLORIDA,

Appellee.

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APR 8 1994

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

Opinion filed April 8, 1994

Appeal from the Circuit Court  
for Volusia County,  
Gayle S. Graziano, Judge.

James B. Gibson, Public Defender, and  
Anne Moorman Reeves, 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 B.H. v. State*, 622 So. 2d 615 (Fla. 5th DCA 1993).

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