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SID J. WHITE

JAN 5 1995

CLERK, SUPREME COURT

By

Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,)
)
 Petitioner,)
)
 vs.)
)
 RAYMOND HORTON,)
)
 Respondent.)
 _____)

CASE NO. 84,885

5th D.C.A. Case No. 93-2344

**APPEAL FROM THE DISTRICT COURT
OF APPEAL, FIFTH DISTRICT**

RESPONDENT'S BRIEF ON JURISDICTION

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

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COUNSEL FOR RESPONDENT

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TABLE OF CITATIONS

<u>CASES CITED:</u>	<u>PAGE NO.</u>
<u>Santoro v. State</u> 19 Fla. L. Weekly D2302 (Fla. 5th DCA 10/28/94)	3
<u>Jollie v. State</u> 405 So. 2d 418 (Fla. 1981)	3

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STATEMENT OF THE CASE AND FACTS

Respondent accepts the Statement of the Case and Facts as presented in Petitioner's Brief on Jurisdiction.

SUMMARY OF ARGUMENT

The decision of the District Court which has been cited as controlling authority in the instant case is presently under review by this Court. This Court therefore has jurisdiction to review the decision of the District Court in this case.

ARGUMENT

THE FLORIDA SUPREME COURT HAS DISCRETIONARY JURISDICTION TO ACCEPT THE INSTANT CASE FOR REVIEW, AS THE DECISION OF THE DISTRICT COURT IN THIS CASE WAS FOUNDED UPON A DECISION OF THE FIFTH DISTRICT COURT OF APPEAL WHICH IS PRESENTLY UNDER REVIEW BY THE FLORIDA SUPREME COURT.

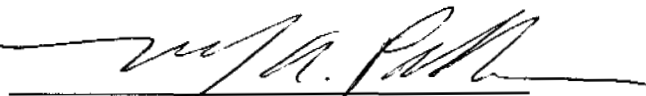
Because the State is correct in its averment that the decision of the Fifth District Court in Santoro v. State, 19 Fla. L. Weekly D 2302 (Fla. 5 DCA 10/28/94), is presently before this Honorable Court for review, and in accordance with Jollie v. State, 405 So. 2d 418 (Fla. 1981), undersigned counsel is unable to argue that this Court has no jurisdiction to entertain the review now sought by the Petitioner.

CONCLUSION

Based upon the foregoing arguments, and the authorities cited therein, Appellant respectfully requests that the Florida Supreme Court enter such order as is deemed appropriate regarding the acceptance of jurisdiction to review the ruling of the District Court in this case.

Respectfully submitted,

JAMES B. GIBSON
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been delivered to the Honorable Robert Butterworth, Attorney General, 444 Seabreeze Blvd., Fifth Floor, Daytona Beach, FL 32118, via his box at the Fifth District Court of Appeal, and mailed to: Mr. Raymond Horton, #895886, Hardee Correctional Institution, Route 2, Box 200, Bowling Green, FL 33834, this 3rd day of January, 1995.



NOEL A. PELELLA
ASSISTANT PUBLIC DEFENDER