

FILED

SID J. WHITE

MAR 23 1995

IN THE SUPREME COURT OF FLORIDA

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

STATE OF FLORIDA,)
)
 Petitioner,)
)
 vs.)
)
 RICHARD SMITH,)
)
 a/k/a HAROLD YUELL,)
)
 Respondent.)
 _____)

S.CT. CASE NO. 85,221
DCA CASE NO. 94-1706

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

RESPONDENT'S JURISDICTIONAL BRIEF

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

NANCY RYAN
ASSISTANT PUBLIC DEFENDER
Florida Bar Number 765910
112 Orange Avenue, Suite A
Daytona Beach, Florida 32114
Phone: 904/252-3367

COUNSEL FOR RESPONDENT



TABLE OF CONTENTS

PAGE NO:

TABLE OF CONTENTS	i
TABLE OF CITATIONS	ii
SUMMARY OF THE ARGUMENT	1
ARGUMENT	
THE DISTRICT COURT'S DECISION IS "PAIRED FOR REVIEW" WITH ANOTHER DECISION CURRENTLY PENDING REVIEW IN THIS COURT; HOWEVER, THIS COURT SHOULD DECLINE TO EXERCISE ITS DISCRETIONARY JURISDICTION BECAUSE THE STATE HAS NOT DILIGENTLY PROSECUTED THIS CASE.	2
CONCLUSION	3
CERTIFICATE OF SERVICE	3

TABLE OF CITATIONS

CASES CITED:

PAGE NO:

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

1,2

Thompson v. State,
638 So. 2d 116 (Fla. 5th DCA 1994),
no. 83,951 (Fla. November 23, 1994)

2

SUMMARY OF ARGUMENT

The Respondent acknowledges that pursuant to the rule of Jollie v. State,¹ this court can exercise discretionary jurisdiction in this matter; however, he urges this court not to do so as the State has not diligently prosecuted its case.

¹Jollie v. State, 405 So. 2d 418 (Fla. 1981).

ARGUMENT

THE DISTRICT COURT'S DECISION IS "PAIRED FOR REVIEW" WITH ANOTHER DECISION CURRENTLY PENDING REVIEW IN THIS COURT; HOWEVER, THIS COURT SHOULD DECLINE TO EXERCISE ITS DISCRETIONARY JURISDICTION BECAUSE THE STATE HAS NOT DILIGENTLY PROSECUTED THIS CASE.


This court has accepted jurisdiction of Thompson v. State, 638 So. 2d 116 (Fla. 5th DCA 1994), no. 83,951 (Fla. November 23, 1994). This case is factually indistinguishable from Thompson. The Respondent in this case acknowledges that pursuant to Jollie v. State, 405 So. 2d 418 (Fla. 1981), this case is "paired for review" with Thompson. However, the State failed to timely file its jurisdictional brief in this case. The State asserts that its failure to do so has not prejudiced the Respondent; the Respondent disagrees. He was placed on probation as a habitual offender, and like the defendants in the numerous cases before this court on the issue certified in Thompson, supra, is awaiting resentencing pursuant to the sentencing guidelines. If the Respondent in this case is found at any time while this case is pending to have violated his probation, he can then be sentenced to prison as a habitual offender. He accordingly submits that his interests are prejudiced by any unauthorized delay in this case, and therefore requests this court to decline to exercise its discretionary jurisdiction in this matter.

CONCLUSION

The respondent acknowledges that this court has jurisdiction to accept review of this case, but requests it do decline to do so.

Respectfully submitted,

JAMES B. GIBSON
PUBLIC DEFENDER




NANCY RYAN
ASSISTANT PUBLIC DEFENDER
Florida Bar No. 765910
112 Orange Avenue, Suite A
Daytona Beach, Florida 32114
Phone: 904/252-3367

COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing has been served on Robert A. Butterworth, Attorney General, of 444 Seabreeze Boulevard, Fifth Floor, Daytona Beach, Florida 32118, by way of his basket at the Fifth District Court of Appeal, this 21st day of March, 1995.



NANCY RYAN
ASSISTANT PUBLIC DEFENDER