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SUMMARY OF ARGUMENT

This court should not exercise its discretionary jurisdiction in this case. There is no express or direct conflict contained in the District Court's opinion. There is nothing more than Petitioner's disappointment with the outcome of the DCA's decision. That is not enough to trigger this court's discretionary jurisdiction. Petitioner has failed to identify any grounds to invoke this court's jurisdiction. Therefore, this court should deny review.

ARGUMENT

THIS COURT SHOULD NOT EXERCISE
DISCRETIONARY JURISDICTION IN THIS
CASE BECAUSE NO GROUNDS EXIST FOR
SUCH JURISDICTION.

This court's jurisdiction is defined by Article V of the Florida Constitution (1991). Art. V, §3(b) expressly sets out this court's jurisdiction, describing every situation in which this court has or may take jurisdiction. Art. V, §3(b), Fla. Const. (1991). That jurisdiction is also set out in Rule 9.030(a) of the Florida Rules of Appellate Procedure.

While Petitioner has attempted to invoke this court's jurisdiction based on "express and direct conflict", this case fails to qualify on that ground. In 1980, Article V was amended to limit the Florida Supreme Court's discretionary jurisdiction in cases involving conflict. Rule 9.030 was likewise revised to incorporate the constitutional amendment. The Committee Notes to Rule 9.030, in discussing the 1980 amendment make it clear that the amendment was intended to reduce the "burgeoning caseload" that the Court handles.

The Committee Note, referring to conflict cases, states that "[t]hese cases comprised the overwhelming bulk of the court's caseload and gave rise to an intricate body of case law interpreting the requirements for discretionary conflict review." For this reason, Article V and Rule 9.030 were amended to require a showing of "express **and** direct" conflict in order to invoke jurisdiction.

The written opinion of the Fifth District Court of Appeal filed July 1, 1994 shows no express and direct conflict with any other court. (See attached opinion). Clearly, nowhere in the opinion does the District Court **express** that there is conflict between its decision and any other court. Nor does the opinion cite to any case which is in **direct** conflict with either the DCA's ruling or the issue presented.

This court, long ago, very clearly delineated the limitation on its jurisdiction which was narrowed by the 1980 constitutional amendment. In *Jenkins v. State*, 385 So. 2d 1356 (Fla. 1980), this court stated

The pertinent language of section 3(b)(3), as amended April 1, 1980, leaves no room for doubt. This Court may only review a decision of a district court of appeal that **expressly** and directly conflicts with a decision of another district court of appeal or the Supreme Court on the same question of law. The dictionary definitions of the term "express" include: "to represent in words"; "to give expression to." "Expressly" is defined: "in an express manner." *Webster's Third New International Dictionary*, (1961 ed. unabr.).

(emphasis in original) *Id.* at 1359. This court further added that

As stated by Justice Adkins in *Gibson v. Maloney*, 231 So. 2d 823 at 824 (Fla. 1970), "[i]t is conflict of **decisions**, not conflict of **opinions** or **reasons** that supplies jurisdiction for review by certiorari."

(emphasis in original) *Id.*

It is evident on the face of the published opinion that there

is no "express" conflict. Similarly, there is no "direct" conflict created by the court's use of the cases to explicate its reasoning. Both the constitution and Rule 9.030 requires that **both** express and direct conflict be obvious. Since neither is present here, this court should decline to take jurisdiction.

In short, there simply is no ground for this court to take discretionary jurisdiction in the instant case. The mere fact that Petitioner is not happy with the outcome of the district court's decision is not a valid ground for this court to revisit the very same issue and facts reviewed by the district court. Because Petitioner has failed to state any grounds which would invoke this court's jurisdiction, this court should deny review of this matter.

CONCLUSION

Based on the arguments and authorities presented herein, Respondent respectfully prays this honorable court deny jurisdiction in this matter.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Respondent's Brief On Jurisdiction had been furnished by delivery to Brynn Newton, Assistant Public Defender for Petitioner, this 18th day of May, 1995.



Rebecca Roark Wall
Of Counsel