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IN THE SUPREME COURT OF FLORIDA

**FILED**

SID J. WHITE

OCT 2 1995

STATE OF FLORIDA,

Petitioner,

86,493

CLERK, SUPREME COURT  
By \_\_\_\_\_  
Chief Deputy Clerk

vs.

CASE NO.:  
1st DCA Case No. 94-04140

JOSEPH J. HALL,

Respondent.

\_\_\_\_\_ /

PETITIONER'S BRIEF ON JURISDICTION

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ATTORNEY GENERAL

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BUREAU CHIEF - CRIMINAL APPEALS  
FLORIDA BAR NO. 0325791

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COUNSEL FOR PETITIONER

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PRELIMINARY STATEMENT

Petitioner, the State of Florida, will be referred to herein as "the State." Respondent, Joseph J. Hall, defendant below, will be referred to herein as "the defendant." References to the First District's opinion below, which is contained in the appendix attached hereto, will be designated by the use of the symbol "A" followed by the appropriate page number(s).

STATEMENT OF THE CASE AND FACTS

Defendant, Joseph J. Hall, was convicted of three counts of battery on a law enforcement officer. He appealed. The First District affirmed his convictions but reversed for resentencing because three convictions scored under "prior record" for purposes of computing the guidelines scoresheet were pending on appeal at the time of sentencing. Relying on the decision in Peterson v. State, 651 So. 2d 781 (Fla. 4th DCA), review granted, Case No. 85,583 (Fla. June 29, 1995), the First District held that these convictions should not have been scored as "prior record."

SUMMARY OF ARGUMENT

Due to the brevity of the argument, a summary would serve no useful purpose and will be omitted.

## ARGUMENT

### ISSUE

WHETHER THIS COURT HAS JURISDICTION TO REVIEW  
THE DECISION OF THE FIRST DISTRICT COURT OF  
APPEAL IN THIS CASE.

The First District's opinion in this case expressly relies upon the decision in Peterson v. State, 651 So. 2d 781 (Fla. 4th DCA), review granted, Case No. 85,583 (Fla. June 29, 1995) which is pending review in this court. (A 1). Peterson has been briefed and was orally argued to the Court on September 1, 1995. Therefore, this court has jurisdiction to review this case under article V, section 3(b)(3) of the Florida Constitution. See, Jollie v. State, 405 So. 2d 418 (Fla. 1981); Reed v. State, 649 So. 2d 227 (Fla. 1995); A.A. v. State, 646 So. 2d 194 (Fla. 1994). To avoid disparate treatment of the defendant in this case and the defendant in Peterson, this Court should accept this case for review.

The state also urges the Court to note the exceptional importance of this issue to the orderly administration of justice. If final judgments of trial courts are presumptively erroneous until they have been sprinkled with holy water by an appellate court, then Florida has entered a judicial sphere where no jurisdiction has been before and plunged sentencing into a black hole. For instance, Hall's prior convictions have been on appeal since 28 February 1994 and the parties are still awaiting a decision. Should any of these scored convictions be reversed, Hall

has a ready remedy through Florida Rule of Criminal Procedure 3.850. The State has no ready remedy if the unscored convictions are affirmed.

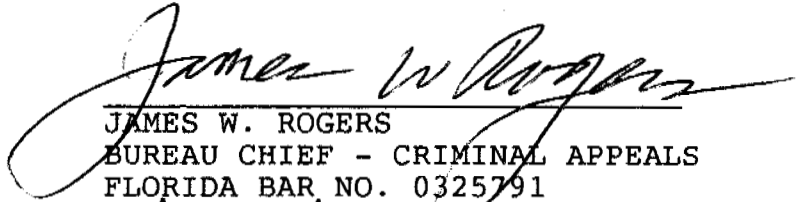



CONCLUSION

For the reasons set forth herein, the State respectfully requests that this Court accept this case for review.

Respectfully Submitted,

ROBERT A. BUTTERWORTH  
ATTORNEY GENERAL

  
\_\_\_\_\_  
JAMES W. ROGERS  
BUREAU CHIEF - CRIMINAL APPEALS  
FLORIDA BAR NO. 0325791

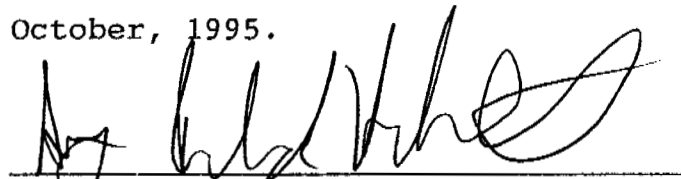
  
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COUNSEL FOR PETITIONER  
TCR 95-111708

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing PPETITIONER'S BRIEF ON JURISDICTION has been furnished by U.S. Mail to MR. FRED PARKER BINGHAM, II, Assistant Public Defender, Leon County Courthouse, Suite 401, 301 South Monroe Street, Tallahassee, Florida 32301, this 2 day of October, 1995.

  
\_\_\_\_\_  
SONYA ROEBUCK HORBELT  
Assistant Attorney General

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

vs.

CASE NO.:  
1st DCA Case No. 94-04140

JOSEPH J. HALL,

Respondent.

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APPENDIX TO  
PETITIONER'S BRIEF ON JURISDICTION

Joseph J. Hall v. State,  
Case No. 94.04140 (Fla. 1st DCA September 18, 1995)

94-1119097  
ML

IN THE DISTRICT COURT OF APPEAL,  
FIRST DISTRICT, STATE OF FLORIDA

JOSEPH J. HALL,  
Appellant,

NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED.

v.

CASE NO. 94-4140

93-141CF

STATE OF FLORIDA,

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Appellee.

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SEP 18 1995

CRIMINAL APPEALS  
DEPT. OF LEGAL AFFAIRS

Opinion filed September 18, 1995.

An appeal from the Circuit Court for Holmes County.  
Russell A. Cole, Judge.

Nancy A. Daniels, Public Defender; Fred Parker Bingham II, Assistant Public Defender,  
Tallahassee, for Appellant.

Robert A. Butterworth, Attorney General; Sonya Roebuck Horbelt, Assistant Attorney  
General, Tallahassee, for Appellee.

Docketed  
9-19-95  
Florida Attorney  
General RB

PER CURIAM.

In this direct criminal appeal, appellant challenges both his convictions and his sentences. We conclude that the challenge to the convictions lacks merit. Accordingly, we affirm the convictions without further discussion. However, because it appears from the face of the record that three convictions scored under "prior record" for purposes of computing the guidelines scoresheet were pending before this court on direct appeal at the

time of sentencing, we vacate appellant's sentences and remand to the trial court for resentencing using a recalculated scoresheet which omits those three convictions. See Peterson v. State, 651 So. 2d 781 (Fla. 4th DCA), review granted, Case No. 85,583 (Fla. June 29, 1995).

CONVICTIONS AFFIRMED; SENTENCES VACATED; and CASE REMANDED, with directions.

WOLF, WEBSTER and VAN NORTWICK, JJ., CONCUR.