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CLERK, SUPREME COURT

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IN THE SUPREME COURT OF FLORIDA

CHARLES W. LEE.
Petitioner.

vs-

Case No# 86,531

STATE OF FLORIDA.
Respondent.

ON DISCRETIONARY REVIEW FROM
THE FIRST DISTRICT COURT OF APPEAL

PETITIONER'S REPLY BRIEF ON THE MERITS

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ARGUMENT

The Respondent(s) suggest that this Court decline jurisdiction, or, if it does accept jurisdiction, to answer the certified question in the negative.

The Respondent(s) further suggest that this Court should "decline discretionary jurisdiction in the interest of orderly administration of justice and out of respect for the constitutional role of the district courts as court of final impression. Petitioner assert, that the District Court acted properly in certifying this question. Hoffman-v-Jones, 280 So. 2d 431,434(Fla. 1973). "District Courts of Appeal are free to certify question of great public interest to Supreme Court for consideration and to state their reasons for advocating change: Id. at 454.

The First District Court of Appeal certified the question because "the matter is not entirely free from doubt." Lee-v-State, 20 Law Weekly, D1995(Fla. 1st DCA August 31, 1995).

The juveniles justice statutory scheme, as adopted by the Legislature, grants to juveniles the right to be treated differently from adults. State-v-Roden, 448 So. 2d 1013,1016-17(Fla. 1984).

A failure to follow provisions setting forth procedure for sentencing juvenile as adult requires remand for resentencing, regardless of whether juvenile abjected to failure. Veach-v-State, 614 So. 2d 680(Fla. 1st DCA 1993); Troutman-v-State, 630 So. 2d 528 (Fla. 1993); Sirmons-v-State, 620 So. 2d 1249(Fla. 1993).

Florida Statute § 958.04(2), which applies to Petitioner case, mandates "consideration of the criteria contained in section 958.04(2), Fla. Stat. (1981)."


An as similar situated defendants. see Stancil-v-State, 405 So. 426(Fla. 2d DCA 1981).

This certification of this question is necessary to at least resolve that doubt of what vehicle that a Youthful Offender must take when challenging trial courts failure to consider a defendant classification as a Youthful Offender.

CONCLUSION


Based on the foregoing reasons, the Petitioner urges this Court to accept jurisdiction.

Respectfully submitted


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petitioner Reply Brief on Jurisdiction was forwarded by U.S. MAIL to; James W. Rogers, Tallahassee Bureau, Chief, Criminal Appeals, and Thomas Flakinburg, Assistant Attorney General, Tha Capitol, Tallahassee, Fla. 32399-1050. This 16 day of December 1995.


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