

IN THE SUPREME COURT OF THE STATE OF FLORIDA

RONALD WALKER,  
Petitioner,  
vs.  
STATE OF FLORIDA,  
Respondent.

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**FILED**

SID J. WHITE

NOV 27 1995

CLERK, SUPREME COURT  
By *[Signature]*  
Chief Deputy Clerk

CASE NO.

PETITIONER'S BRIEF ON JURISDICTION

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POINT

THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL IN THE PRESENT CASE CITES AS CONTROLLING AUTHORITY ANOTHER CASE WHICH IS PRESENTLY PENDING IN THIS COURT FOR REVIEW AND WHICH DIRECTLY AND EXPRESSLY CONFLICTS WITH THE DECISION OF ANOTHER DISTRICT COURT OF APPEAL ON THE SAME QUESTION OF LAW. . . . .	4
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PRELIMINARY STATEMENT

Petitioner was the appellant in the Fourth District Court of Appeal and the defendant in the Criminal Division of the Circuit Court of the Seventeenth Judicial Circuit, in and for Broward County, Florida. Respondent, the State of Florida, was the appellee and the prosecution, respectively. In the brief, the parties will be referred to as they appear before this Court.

STATEMENT OF THE CASE AND FACTS

Petitioner's conviction and sentence were affirmed by the Fourth District Court of Appeal on the authority of King v. State, 648 So. 2d 183 (Fla. 1st DCA 1995), rev. granted, No. 85,026 (Fla. May 25, 1995).

SUMMARY OF THE ARGUMENT

The decision of the Fourth District Court of Appeal in the present case cites as controlling authority another case which is presently pending in this Court for review and which directly and expressly conflicts with the decision of another district court of appeal on the same issue of law. This Court therefore has jurisdiction to review the instant case.

ARGUMENT

POINT

THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL IN THE PRESENT CASE CITES AS CONTROLLING AUTHORITY ANOTHER CASE WHICH IS PRESENTLY PENDING IN THIS COURT FOR REVIEW AND WHICH DIRECTLY AND EXPRESSLY CONFLICTS WITH THE DECISION OF ANOTHER DISTRICT COURT OF APPEAL ON THE SAME QUESTION OF LAW.

In Jollie v. State, 405 So. 2d 418 (Fla. 1981), this Court held that it has jurisdiction to review the per curiam decision of a district court of appeal which cites as controlling authority another case which is pending for review in this Court. In the instant case, the Fourth District Court of Appeal affirmed Petitioner's conviction and sentence, citing as controlling authority King v. State, 648 So. 2d 183 (Fla. 1st DCA 1994), rev. granted, No. 85,026 (Fla. May 25, 1995).

In King, a majority of the panel decided that, when a defendant is properly found to be a habitual offender when first sentenced to a split sentence, there is no error in placing him on probation and then sentencing him as a habitual offender after probation is violated. King conceded that its decision was in direct and express conflict with the decision of the Second District Court of Appeal in Davis v. State, 623 So. 2d 547 (Fla. 2d DCA 1993), which held that a defendant may not be sentenced as a habitual offender when he violates the probation imposed as part of his original split sentence where the incarcerative portion of that split sentence was not subject to habitual offender treatment. The sentence thus imposed is an illegal hybrid sentence, involving elements of both habitual offender sentencing and non-habitual offender sentencing. See also, Shaw v.

State, 637 So. 2d 245 (Fla. 2d DCA 1994).

Because King, the case cited as controlling authority by the Fourth District Court of Appeal in the present case, is now pending before this Court for review, this Court has jurisdiction over the instant cause. Jollie. Moreover, to avoid the potential for an unfair result should this Court reverse King and affirm Davis, upon which Petitioner relies, this Court should accept jurisdiction of the instant case to insure that Petitioner receives the benefit of the issue he has timely raised on appeal.




CONCLUSION

Based on the foregoing argument and the authorities cited, Petitioner requests that this Court accept jurisdiction of the instant cause.

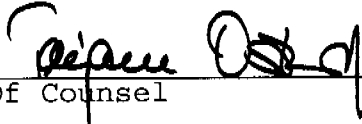
Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to Joseph A. Tringali, Assistant Attorney General, Office of the Attorney General, Third Floor, 1655 Palm Beach Lakes Boulevard, West Palm Beach, Florida 33401-2299, by courier this 22<sup>nd</sup> day of NOVEMBER, 1995.

  
\_\_\_\_\_  
Of Counsel

IN THE SUPREME COURT OF THE STATE OF FLORIDA

RONALD WALKER,

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P E T I T I O N E R ' S   A P P E N D I X

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IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT

JULY TERM 1995

RONALD WALKER,  
Appellant,

v.

STATE OF FLORIDA,  
Appellee.

CASE NO. 94-2218.

L.T. CASE NO. 93-4749 CF10A.

NOT FINAL UNTIL TIME EXPIRES  
TO FILE REHEARING MOTION  
AND, IF FILED, DISPOSED OF.

Opinion filed October 25, 1995

Appeal from the Circuit Court for  
Broward County; Barry E. Goldstein,  
Judge.

Richard L. Jorandby, Public Defender,  
and Tanja Ostapoff, Assistant Public  
Defender, West Palm Beach, for  
appellant.

Robert A. Butterworth, Attorney  
General, Tallahassee, and Joseph A.  
Tringali, Assistant Attorney General,  
West Palm Beach, for appellee.

PER CURIAM.

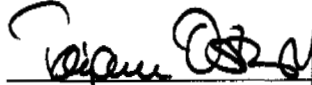
Appellant's conviction is affirmed. Appellant's sentence  
is affirmed on the authority of King v. State, 648 So. 2d 183 (Fla.  
1st DCA 1994), rev. granted, No. 85,026 (Fla. May 25, 1995).

AFFIRMED.

GUNTHER, C.J., DELL and STEVENSON, JJ., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy Petitioner's Appendix has been furnished to JOSEPH A. TRINGALI, ESQ., Assistant Attorney General, Office of the Attorney General, Third Floor, 1655 Palm Beach Lakes Boulevard, West Palm Beach, Florida 33401-2299, by courier this 22<sup>nd</sup> day of NOVEMBER, 1995.



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