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**STATEMENT OF THE CASE AND OF THE FACTS**

Respondent accepts Petitioner's Statement of the Case and Facts.

## **SUMMARY OF THE ARGUMENT**

The opinion for which review is sought is a citation only per curiam opinion with no explicit notation of a contrary holding. The cited opinions have not been reversed or receded from, nor is either pending before this Court. Thus, the opinion for which review is sought does not expressly and directly conflict with the decision of another district court or of this Court within the meaning of Art. V, § 3(b)(3), Fla. Const. (1980).

## **ARGUMENT**

### **ISSUE**

**THE PER CURIAM CITATION OPINION OF THE SECOND DISTRICT COURT OF APPEAL LACKS THE DIRECT AND EXPRESS CONFLICT WITH THE DECISION OF ANOTHER DISTRICT COURT OR OF THIS COURT WHICH IS REQUIRED FOR EXERCISE OF THIS COURT'S CONFLICT JURISDICTION.**

Petitioner asks this Court to exercise its conflict jurisdiction to review an opinion of the Second District Court of Appeal that in its entirety reads as follows:

“PER CURIAM.

Affirmed. See State v. Lamoureux, 660 So. 2d 1063 (Fla. 2d DCA 1995); Pulaski v. State, 540 So. 2d 193 (Fla. 2d DCA 1995), review denied, 547 So. 2d. 1210 (Fla. 1989).”

In Dodi Publishing Company v. Editorial America, S. A., 385 So. 2d 1369 (Fla. 1980), this Court dismissed a petition for review of a per curiam decision containing only citation to other case law, rejecting the assertion that it should reexamine a cited case in order to determine whether there was conflict with other appellate decisions.

In Jollie v. State, 405 So. 2d 418 (Fla. 1981), this Court reaffirmed Dodi. 405 So. 2d at 421.

More recently, in The Florida Star v. B. J. E., 530 So. 2d 286 (Fla. 1988), this Court noted that

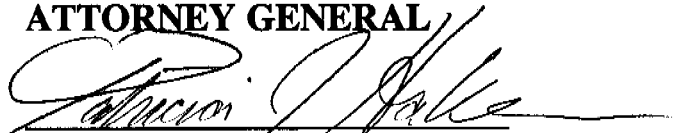
“ . . . there can be no actual conflict discernible in an opinion containing only a citation to other case law unless one of the cases cited as controlling authority is pending before this Court, or has been reversed on appeal or review, or receded from by this Court, or unless the citation explicitly notes a contrary holding of another district court or of this Court. Jollie v. State, 405 So. 2d 418, 420 (Fla. 1981).” 530 So. 2d at n. 3.

The cases cited by the Second District Court of Appeal in the opinion for which review is sought are not pending before this Court and have not been reversed. Nor does the citation in that opinion explicitly note a contrary holding of another District Court or of this Court. Thus, the express and direct conflict required by Art. V, § 3(b)(3), Fla. Const. (1980) is not discernible in the Second District opinion and review should be denied.

**CONCLUSION**

**WHEREFORE**, based upon the foregoing facts, arguments and authorities, the State respectfully requests that this Honorable Court decline to review the decision of the Second District Court of Appeal.

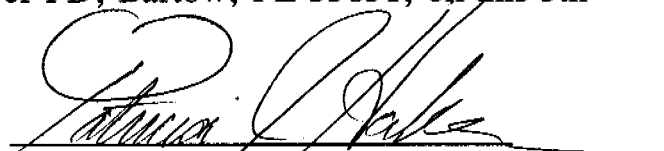
Respectfully submitted,  
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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by U.S. Mail to John T. Kilcrease, Jr., Assistant Public Defender, Polk County courthouse, P. O. Box 9000--Drawer PD, Bartow, FL 33831, on this 5th day of March, 1996.



**COUNSEL FOR APPELLEE**