SUPREME COURT OF FLORIDA

500 South Duval Street
Tallhassee, Florida 32399-1927
(904) 488-0125

WILLIAM ALBRITTON,

Defendant/Petitioner,

vs.

STATE OF FLORIDA,

Plaintiff/Respondent

CASE NO.: 89,364
5DCA CASE NO.: 94-02765

Accepted

PETITIONER'S BRIEF ON JURISDICTION

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TABLE OF CONTENTS

TABLE OF CITATIONS

STATEMENT OF FACTS

On May 4, 1992, Petitioner, WILLIAM ALBRITTON, entered a no contest plea in Case Number 91-1679; Case Number 91-1843; and, Case Number 91-1786. (Plea Tr. 4-5). The written agreement which served as the basis for such plea provided, inter alia, the trial court would "suspend the top end of the guidelines as a habitual offender with the following conditions: Defendant would be sentenced to a period of community control followed by probation..." (emphasis supplied). (R.291). Subsequent to the entry of such plea, the State unsuccessfully sought to void the agreement and have such agreement declared illegal, (Plea Tr. 3-5) The trial court agreed that a habitual sentence could not be suspended. (*Id.* at 24-25). Thereafter, on June 30, 1992, the Defendant was sentenced to two (2) years of community control followed by thirteen (13) years of probation ('92 Sent. Tr. 4). At the time of such sentencing, the trial court specifically stated, "I do not find it necessary at this time to sentence him as a habitual offender." ('92 Sent. Tr. 23). However, at the time of sentencing, the court further stated that if the Defendant violated his community control, by the commission of a crime, the court would impose the maximum sentence available to this court. ('92 Sent. Tr,. 22). The prosecution repeatedly stated and acknowledged that if the Defendant should subsequently violate his probation, it was their intention at the time of such violation, pursuant to the plea agreement, that the trial court would impose the maximum

guideline sentence of twenty-two (22) years as a habitual offender. ('92 Sent. Tr. 40-41).

Thereafter, Petitioner was convicted of violating his community control by leaving his residence without permission. (*Id*. at 75-76). On October 31, 1994, the Defendant was given a sixty (60) year habitual sentence for such violation of probation. (*Id*. at 60-62). This sentence is the subject of this appeal.

STATEMENT OF JURISDICTIONAL BASIS

Petitioner herein, WILLIAM ALBRITTON, has previously filed a Notice to Invoke Discretionary Jurisdiction to review the decision of the Fifth District Court of Appeal rendered on September 6, 1996, and the subsequent denial of Appellant's Motion for Rehearing on October 15, 1996. The basis of such request was that this decision passes on a question certified to be of great public importance.

Specifically, the District Court of Appeal issued a Per Curiam Affirmed decision predicated upon Snead v. State, 616 So.2d 964, 965 (Fla. 1993); and, King v. State, 648 So.2d 183, 185 (Fla. 1st DCA, 1994, rev. granted, 659 So.2d 1087 (Fla. 1995). The case of Kins v. State, supra, was previously certified by the First District Court of Appeal as addressing an issue of great public importance. This Court has succinctly stated the relevant issued presented in King v. State as follows:

> The issue presented here is whether a trial judge, upon revocation of probation, can lawfully impose an habitual offender sentence, despite having declined to impose such sentence at the original sentencing. Kins v. State, 21 Fl. Law Weekly S456 (October, 1996).

Subsequent to the rendition of the decision by the Fifth District Court of Appeal herein, this Court answered such question in the negative; quashed the decision rendered by the First District Court of Appeal; and, remanded the case for proceedings consistent with its opinion. (*Id.*).

As the Fifth District Court of Appeal cited King v. State, supra, as controlling authority for its decision, and as such case was subsequently reversed by this Court, a prima facia basis exists which allows this Court to exercise its discretionary jurisdiction. Jollie v. State, 405 So.2d 418 (Fla. 1981).

Although the court also cites the case of Snead v. State, 616 So.2d 964, 964 (Fla. 1993), such case does not provide a basis for the ruling of the Fifth District Court of Appeal. Specifically, the Snead case states that upon revocation of probation, a trial court may depart from presumptive sentencing guidelines, if the reasons for departure existed at the time the trial judge initially sentenced the defendant on the underlying offense. As set forth, in the Statement of Facts above, the trial court had previously specifically stated at the time of sentencing that "I do not find it necessary at this time to sentence him [Petitioner] as a habitual offender." ('92 Sent. Tr. 58) .

Accordingly, as this Court has previously reversed the holding in King v. State, 648 So.2d 183, 185 (Fla. 1st DCA, 1994), and as such case constituted the basis for the holding of the Fifth District Court of Appeal, this Court should properly accept jurisdiction in this matter.

CONCLUSION

On the basis of the foregoing, the undersigned requests that this Court accept jurisdiction in this matter.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to **Kristen L. Davenport, Esquire,** Office of the State General, 444 Seabreeze Boulevard, Fifth Floor, Daytona Beach, Florida 32118 on this 12th day of February, 1997.

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WP-51\docs\Albritt.28