

FILED

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CLERK, SUPREME COURT

By
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

WILLIAM ALBRITTON,

Petitioner,

v.

CASE NO. 89,364

STATE OF FLORIDA,

Respondent.

ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

JURISDICTIONAL BRIEF OF RESPONDENT

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COUNSEL FOR RESPONDENT

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TABLE OF AUTHORITIES

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648 So. 2d 183 (Fla. 1st DCA 1994),
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485 So. 2d 829 (Fla. 1986) 3

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OTHER:

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STATEMENT OF FACTS

The facts of this case were not set forth in the district court's "per curiam affirmed" decision. Albritton v. State, 21 Fla. L. Wkly. D2010 (Fla. 5th DCA Sept. 6, 1996).

SUMMARY OF ARGUMENT

This Court does have the discretion to accept jurisdiction of this case. However, since this Court has recently issued two opinions dealing with the situation involved herein, for the sake of judicial economy it would be more appropriate to simply summarily remand this case for reconsideration by the district court.

ARGUMENT

THIS COURT SHOULD HAS THE DISCRETION
TO ACCEPT JURISDICTION OF THIS CASE,
BUT SUCH DISCRETION NEED NOT BE
EXERCISED.

This Court has jurisdiction under article V, section (3) (b) (3) of the Florida Constitution where a decision of a district court "expressly and directly conflicts" with a decision of this Court or another district court. This Court has repeatedly held that such conflict must be express and direct, that is, "it must appear within the four corners of the majority decision." Reaves v. State, 485 So. 2d 829, 830 (Fla. 1986).

Where the district court's decision is a per curiam opinion which cites as controlling law a decision that is either pending review in or has been reversed by this Court, this Court has the discretion to accept jurisdiction. Joie v. State, 405 So. 2d 418, 420 (Fla. 1981). The State acknowledges that this Court has the authority to accept jurisdiction of this case in light of the district court's citation to King v. State, 648 So. 2d 183 (Fla. 1st DCA 1994), quashed, 21 Fla. L. Wkly. S456 (Fla. Oct. 24, 1996).

Given the circumstances of the instant case, however, the State submits that this Court should decline to reach the merits, but instead should simply remand to the district court for

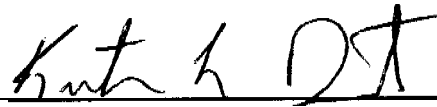
reconsideration in light of its decision in King, as well as its subsequent decision interpreting King -- Walker v. State, 21 Fla. L. wkly. S491 (Fla. Nov. 7, 1996). Both of these cases were decided only shortly after the district court denied rehearing in the present case. Remanding for reconsideration would give the district court the opportunity to reexamine its decision in light of the principles set forth in these cases, without burdening this Court with the application of such law to the merits of the instant case.

CONCLUSION

Based on the arguments and authorities presented herein, respondent respectfully requests this honorable Court decline to accept jurisdiction of this case.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

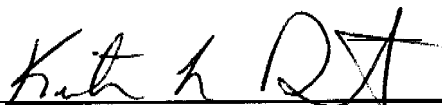


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above Jurisdictional Brief has been furnished to by U.S. mail to Joseph A. Frein, 118 East Jefferson Street, Orlando, Florida 32801, this 6th day of March, 1997.



Kristen L. Davenport\
Counsel for Respondent

IN THE SUPREME COURT OF FLORIDA

WILLIAM ALBRITTON,

Petitioner,

v.

CASE NO. 89,364

STATE OF FLORIDA,

Respondent.

APPENDIX OF RESPONDENT

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IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT
JTJLY TERM 1996

WILLIAM ALBRITTON,
Appellant,

NOT FINAL UNTIL THE TIME EXPIRES
TO FILE A HEARING MOTION, AND,
IF FILED, DISPOSED OF.

M

v.

CASE NO. 94-2765

STATE OF FLORIDA,
Appellee.

LC# 91-1679

Opinion filed September 6, 1996

Appeal from the Circuit Court
for Osceola County,
Jose R. Rodriguez, Judge.

Joseph A. Frein, Winter Park,
for Appellant.

Robert A. Butterworth, Attorney
General, Tallahassee, and
Kristen L. Davenport, Assistant
Attorney General, Daytona Beach,
for Appellee.

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DAYTONA BEACH, FLORIDA

PER CURIAM.

AFFIRMED. See Snead v. State, 616 So. 2d 964, 965 (Fla. 1993); King
v. State, 648 So. 2d 183, 185 (Fla. 1st DCA 1994), rev. granted, 659 So. 2d 1087
(Fla. 1995).

HARRIS, THOMPSON and ANTOON, JJ., concur.