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CASE NO. 96-1927

LOWER TRIBUNAL NO. 92-1731, 92-1563

89,380

THE STATE OF FLORIDA,

Petitioner,

-vs-

JIMMY HUDSON,

Respondent.

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ON PETITION FOR DISCRETIONARY REVIEW FROM  
THE DISTRICT COURT OF APPEAL OF FLORIDA,  
THIRD DISTRICT

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BRIEF OF PETITIONER ON JURISDICTION

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## INTRODUCTION

Petitioner, THE STATE OF FLORIDA, was the prosecution in the trial court and Appellee in the District Court of Appeal of Florida, Third District. Respondent, JIMMY HUDSON, was the defendant in the trial court and the Appellant in the District Court of Appeal. The parties shall be referred to as they stood in the trial court. The symbol "App." followed by a page number refers to the appendix to this brief, containing a conformed copy of the slip opinion of the District Court.

STATEMENT OF THE CASE AND FACTS

This is a petition for discretionary review of a decision of the Third District Court of Appeal that affirmed the denial of a motion to correct illegal sentence filed by the Defendant. The Third District stated that imposition of a minimum mandatory term under the habitual offender statute is discretionary. (App. 1)

QUESTION PRESENTED

WHETHER THE DECISION OF THE LOWER COURT  
CONFLICTS WITH DECISIONS OF OTHER DISTRICT  
COURTS OF APPEAL?

### SUMMARY OF THE ARGUMENT

As the Third District itself noted, the decision of the Third District Court of Appeal on the question of whether the imposition of minimum mandatory terms under the habitual offender statute is permissive conflicts with the decisions of other district courts. The First District Court of Appeal in *White v. State*, 618 So. 2d 354 (Fla. 1st DCA 1993), the Second District Court of Appeal in *Sims v. State*, 605 So. 2d 997 (Fla. 2d DCA 1992) and the Fifth District Court of Appeal in *Martin v. State*, 608 So. 2d 571 (Fla. 5th DCA 1992) have **all held** differently from the Third District on this question of law. The lower court's decision held that the imposition of a minimum mandatory term under §775.084(4)(b)(2), Fla. Stat. (1993), was discretionary while the decisions of the other districts held that the imposition of a minimum mandatory term was mandatory.

## ARGUMENT

Section 775.084(4)(b), Fla. Stat. (1993), states:

(b) The court, in conformity with the procedure established in subsection (3), may sentence the habitual violent felony offender as follows:

1. In the case of a felony of the first degree, for life, and such offender shall not be eligible for release for 15 years.

2. In the case of a felony of the second degree, for a term of years not exceeding 30, and such offender shall not be eligible for release for 10 years,

3. In the case of a felony of the third degree, for a term of years not exceeding 10, and such offender shall not be eligible for release for 5 years.

In interpreting this section, the Third District read the language "such offender shall not be eligible for release" as allowing the trial court in its discretion to impose a minimum mandatory term when the trial court elected to sentence a defendant as a habitual violent felony offender.

However, in interpreting this same language, the First, Second and Fifth Districts determined that imposition of minimum mandatory terms were required. This interpretation is consistent with the use of the mandatory "shall" in discussing minimum mandatory terms. As this conflict impinges on the legislature's intent to have



consistency in sentence, this Court should accept jurisdiction and resolve this conflict.

CONCLUSION

WHEREFORE, based on the preceding authorities and arguments, Petitioner respectfully requests that the Court accept jurisdiction to review this cause.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief of Appellee was mailed this 14<sup>th</sup> day of November, 1996, to JIMMY HUDSON, Pro Se, Charlotte Correctional Inst. 33123 Oil Well Road, Punta Gorda, Florida 33955.



WANDA RAIFORD  
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