IN THE SUPREME COURT OF FLORIDA

TEAYOIR SCANTLING,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

CASE NO. 90,968

JURISDICTIONAL BRIEF OF RESPONDENT

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ATTORNEY GENERAL

JAMES W. ROGERS
TALLAHASSEE BUREAU CHIEF,
CRIMINAL APPEALS
FLORIDA BAR NO. 325791

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COUNSEL FOR RESPONDENT

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PRELIMINARY STATEMENT

Respondent, the State of Florida, the Appellee in the District Court of Appeal (DCA) and the prosecuting authority in the trial court, will be referenced in this brief as Respondent, the prosecution, or the State. Petitioner, Teayoir Scantling, the Appellant in the DCA and the defendant in the trial court, will be referenced in this brief as Petitioner or proper name.

"PJB" will designate Petitioner's Jurisdictional Brief. That symbol is followed by the appropriate page number.

A bold typeface will be used to add emphasis. Italics appeared in original quotations, unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

Respondent agrees with petitioner that the pertinent history and facts are set out in the decision of the lower tribunal, found at 22 Fla. L. Weekly D1491 (Fla. 1st DCA June 17, 1997).

SUMMARY OF ARGUMENT

Petitioner correctly points out that this Court has jurisdiction because the lower tribunal decisions are in conflict. However, this Court should decline to exercise its jurisdiction because the controlling statute requires the sentences to be consecutive. Thus, any trial court's direction to make the sentences consecutive is surplusage, and, any appellate court's striking of the trial court's language will not change the way the sentence is applied. Therefore, this Court should decline to exercise its jurisdiction to resolve the conflict as it would be a meaningless expenditure of judicial resources.

ARGUMENT

ISSUE I

ARE THE DECISIONS OF THE DISTRICT COURTS IN EXPRESS AND DIRECT CONFLICT AND SHOULD THIS COURT EXERCISE ITS JURISDICTION? (Restated)

Jurisdictional Criteria

Petitioner contends that this Court has jurisdiction pursuant to Fla. R. App. P. 9.030(a)(2)(A)(iv), which parallels Article V, § 3(b)(3), Fla. Const. The constitution provides:

> The supreme court . . . [m]ay review any decision of a district court of appeal . . . that expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law.

Thus, the fundamental prerequisite for discretionary review is proof of the existence of direct and express conflict between the decisions of district courts of appeal, or, between the decisions of the district court and the decisions of this Court on the same question of law. Reaves v. State, 485 So.2d 829 (Fla. 1986). Jenkins v. State, 385 So.2d 1356 (Fla. 1980).

In Reaves, this court defined the type of conflict which must exist to accept a petition for discretionary review. It said:

> Conflict between decisions must be express and direct, i.e., it must appear within the four corners of the majority decision. Neither a dissenting opinion nor the record itself can be used to establish jurisdiction.

Thus, to establish a basis for this Court's exercise of jurisdiction petitioner must show conflict between decisions which is "express and direct" and "must appear within the four

corners of the majority decision." Reaves v. State, 485 So.2d 829, 830 (Fla. 1986). Accord Dept. of Health and Rehabilitative Services v. Nat'l Adoption Counselin Service, Inc., 498 So.2d 888, 889 (Fla. 1986)(rejected "inherent" or "implied" conflict; dismissed petition).

Neither the record, nor a concurring opinion, nor a dissenting opinion can be used to establish, jurisdiction. Reaves, supra; Jenkins v. State, 385 So.2d 1356, 1359 (Fla. 1980)("regardless of whether they are accompanied by a dissenting or concurring opinion").

In addition, it is the "conflict of *decisions,* not conflict of *opinions* or *reasons* that supplies jurisdiction for review by certiorari." Jenkins, 385 So.2d at 1359.

In order for conflict to suffice as a basis for this Court's jurisdiction, the conflict must be on the same point of law. For, conflict jurisdiction can be invoked only when different principles of law are applied to indistinguishable facts. Department of Revenue v. Johnson, 442 So.2d 950 (Fla. 1983).

Petitioner is correct that the opinion of the District Court in Lyons v. State, 672 So.2d 654 (Fla. 4th DCA 1996) conflicts with the en banc decision of the District Court in the instant case. Therefore, jurisdiction does exist.

Exercise of Jurisdiction

Even when that jurisdiction exists, this Court does not have to exercise its jurisdiction. In Ansin v. Thurston, 101 So. 2d 808, 810 (Fla. 1958), this Court explained:

> It was never intended that the district courts of appeal should be intermediate courts. The revision and modernization of the Florida judicial system at the appellate level was prompted by the great volume of cases reaching the Supreme Court and the consequent delay in the administration of justice. The new article embodies throughout its terms the idea of a Supreme Court which functions as a supervisory body in the judicial system for the State, exercising appellate power in certain specified areas essential to the settlement of issues of public importance and the preservation of uniformity of principle and practice, with review by the district courts in most instances being final and absolute.

This is a case where it would be appropriate to decline to exercise jurisdiction, Control release is a form of parole administered by the parole commission. When one violates control release no new sentence is imposed. The commission decides whether to reincarcerate the violator to serve his sentence. See § 947.141 Fla. Stat. (1995) The Court in the instant case said that the trial court could run the new sentence consecutive to the old sentence. The Court in Lyons said that the trial court could not run them consecutively. The conflict does not need resolution from this Court because the issue of whether the sentences will run concurrently or consecutively is a sentencing issue which is not decided by court opinion. The issue is controlled by § 921.06 Fla. Stat. (1995) which provides that sentences which stem from separate indictments or informations are to be served consecutively unless the trial judge directs that they be served concurrently. Thus, irrespective of the fact that the Court struck the consecutive sentencing language in the Lyons case, Mr. Lyons' sentences will be served consecutively

just as Mr. Scantling's sentences will be served consecutively because the legislature has directed the Department of Corrections in how such sentences shall be handled.

Therefore, this Court should decline to accept jurisdiction because no matter how the Court resolves the issue of whether revocation of control release is a future sentence, the legislatively mandated procedure will be applied and the sentences imposed will be served consecutively by the defendants.

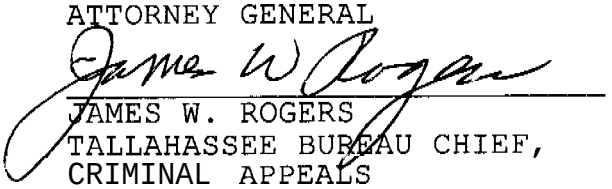
Since resolution of the issue would provide no relief and the issue is mooted by the statute, this Court should decline to exercise its jurisdiction as it would be a waste of scarce judicial resources.

CONCLUSION

Based on the foregoing reason, the State respectfully requests this Honorable Court decline to exercise jurisdiction.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL



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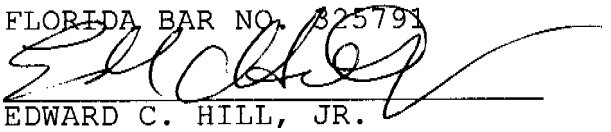

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing JURISDICTIONAL BRIEF OF RESPONDENT has been furnished by U.S. Mail to Paula S. Saunders, Esq., Assistant Public Defender, Leon County Courthouse, Suite 401, 301 South Monroe Street, Tallahassee, Florida 32301, this 22nd day of July, 1997.

Edward C. Hill, Jr.
Attorney for the State of Florida

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