

IN THE SUPREME COURT OF FLORIDA

FILED

W.D. J. WHITE

SEP 2 1997

ISIAIHNEAL,

Petitioner,

v.

CLERK, SUPREME COURT

Chief Deputy Clerk

Case No. 91249
2d DCA No. 95-2792

STATE OF FLORIDA,

Respondent.

**DISCRETIONARY REVIEW OF DECISION OF THE
DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT
STATE OF FLORIDA**

BRIEF OF RESPONDENT ON JURISDICTION

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SUMMARY OF THE ARGUMENT

The issue presented in the instant case was previously certified to this Court and is now pending in Lee v. State, Case No. 88,924. Moreover, the Second District has acknowledged, but not certified, that its opinion is in conflict with decisions of other districts.

ARGUMENT

ISSUE

WHETHER CONFLICT EXISTS SO AS TO
INVOKE DISCRETIONARY REVIEW.

In Lee v. State, 695 So. 2d 1314 (Fla. 2d DCA 1997), the Second District Court of Appeal acknowledged interdistrict conflict and certified the following question to be of great public importance:

IF A CONEY ISSUE IS NOT PRESERVED AT TRIAL,
MUST A PRISONER FILE A POSTCONVICTION
MOTION ALLEGING UNDER OATH THAT HE OR
SHE WOULD NOT HAVE EXERCISED
PEREMPTORY CHALLENGES IN THE SAME
MANNER AS HIS OR HER ATTORNEY?

Lee, 695 So. 2d at 13 15. The Lee case is pending before this Court, Case No. 88,924. This same issue is addressed in the instant case.

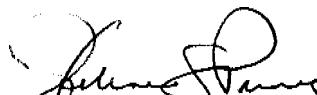
Moreover, in the instant case, the Second District has acknowledged, but not certified, that its opinion is in conflict with decisions of other districts which hold that Coney errors are fundamental. Thus, it appears that this Court has jurisdiction pursuant to Art. V, §3(b)(3) & (b)(4), Fla. Const.

CONCLUSION

Based on the foregoing facts, argument, and citations of authority, Respondent acknowledges that this Honorable Court has jurisdiction 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 Julius J. Aulisio, Assistant Public Defender, P. O. Box 9000--Drawer PD, Bartow, Florida 33831, this 29th day of August, 1997.



COUNSEL FOR RESPONDENT