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**FILED**

SID J. WHITE

**JAN 30 1998**

CLERK, SUPREME COURT  
By \_\_\_\_\_  
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

RICKEY PAUL MURRAY

Petitioner,

v.

Case No. 92,143

STATE OF FLORIDA,

Respondent.

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ON DISCRETIONARY REVIEW FROM  
THE FIFTH DISTRICT COURT OF APPEAL

JURISDICTIONAL BRIEF OF RESPONDENT

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ATTORNEY GENERAL

MARY G. JOLLEY  
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COUNSEL FOR RESPONDENT

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Raulerson v. State, 699 So.2d 339 (Fla. 5th DCA 1997) . . 1,2,3,4

Other Authorities

Art. V, Sec. 3(b)(3), Fla. Const. . . . . 3

STATEMENT OF FACTS

Murray's conviction and sentence were affirmed without opinion by the Fifth District Court of Appeal. Murray v. State, 701 So.2d 1251 (Fla. 5th DCA 1997). In so holding, the district court found this case to be controlled by its recent decision in Raulerson v. State, 699 So. 2d 339 (Fla. 5th DCA 1997).

SUMMARY OF ARGUMENT

In deciding this case, the district court relied on its recent opinion in Raulerson v. State. A petition for review of Raulerson is presently pending before this Court (case # 91,611). Should this Court grant review in Raulerson, the Court would also have jurisdiction to review the instant case. However, in the absence of review of Raulerson, no review of this case is warranted, as the district court's limited per curiam affirmed opinion does not facially conflict with any other case.

## ARGUMENT

THIS COURT SHOULD DECLINE TO ACCEPT  
JURISDICTION OF THIS CASE UNLESS IT  
ACCEPTS JURISDICTION IN RAULERSON.

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. 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. Jollie v. State, 405 So. 2d 418, 420 (Fla. 1981).

Here, the district court found this case to be controlled by its recent decision in Raulerson v. State, 699 So. 2d 339 (Fla. 5th DCA 1997). A petition for review of Raulerson is presently pending before this Court (case # 91,611). Should this Court grant review in Raulerson, jurisdiction would be appropriate in this case as well.

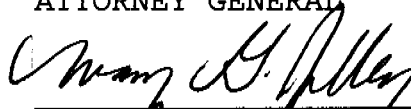
However, if this Court declines to accept jurisdiction in Raulerson, then it must decline jurisdiction here also, as the district court's limited per curiam affirmed opinion does not facially conflict with any other case.. See Harrison v. Hyster Co., 515 So. 2d 1279 (Fla. 1987).

CONCLUSION

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

Respectfully submitted,

ROBERT A. BUTTERWORTH  
ATTORNEY GENERAL



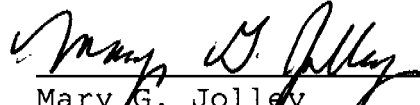
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above Jurisdictional Brief has been furnished by delivery to Brynn Newton, Assistant Public Defender, this 29<sup>th</sup> day of January, 1998.

  
\_\_\_\_\_  
Mary G. Jolley  
Counsel for Respondent



IN THE SUPREME COURT OF FLORIDA

RICKEY PAUL MURRAY

Petitioner,

v.

Case No. 92,143

STATE OF FLORIDA,

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ON DISCRETIONARY REVIEW FROM  
THE FIFTH DISTRICT COURT OF APPEAL

RESPONSENT'S APPENDIX

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image provision of the subsec-  
t above. The clause which is  
the quote, "any dam-  
nained caused by the taking  
the action is by the Depart-  
ortation, county, municipality,  
or other public body for the  
of a right-of-way," relates to  
remainder. It appears that  
everance damage may be off-  
terment caused by the im-  
ler the provisions of section

of section 73.071 makes it  
egislature recognized that the  
ay" has an all-inclusive defi-  
s of a "road, canal, levee, or  
ility right-of-way." (Em-  
It appears, therefore, that  
are intended to limit subsec-  
damages to a "road" right-  
ation, it would have done so

and REMANDED.

and W. SHARP, JJ., concur.



LOSTER, Appellant,

v.

I. KUBICA, Appellee.

No. 97-831.

rt of Appeal of Florida,  
Fifth District.

Dec. 5, 1997.

peal from the Circuit Court  
nty; John W. Springstead,

, Withlacoochee Area Legal  
ooksville, for Appellant.

Scott Timothy Smith of Law Offices of  
James Martin Brown, Brooksville, for Appel-  
lee.

PER CURIAM.

AFFIRMED. See *Williams v. Williams*,  
676 So.2d 493 (Fla. 5th DCA 1996).

GOSHORN, THOMPSON and ANTOON,  
JJ., concur.



1

Rickey Paul MURRAY, Appellant,

v.

STATE of Florida, Appellee.

No. 97-707.

District Court of Appeal of Florida,  
Fifth District.

Dec. 5, 1997.

Appeal from the Circuit Court for Marion  
County; Carven D. Angel, Judge.

James B. Gibson, Public Defender, and  
Brynn Newton, Assistant Public Defender,  
Daytona Beach, for Appellant.

Robert A. Butterworth, Attorney General,  
Tallahassee, and Mary G. Jolley, Assistant  
Attorney General, Daytona Beach, for Appel-  
lee.

PER CURIAM.

AFFIRMED. See *Raulerson v. State*, 699  
So.2d 339 (Fla. 5th DCA 1997).

DAUKSCH, PETERSON and  
THOMPSON, JJ., concur.



2

Alfred L. JACOBS, Appellant,

v.

STATE of Florida, Appellee.

No. 97-2980.

District Court of Appeal of Florida,  
Fifth District.

Dec. 5, 1997.

3.850 Appeal from the Circuit Court for  
Orange County; Richard F. Conrad, Judge.

Alfred L. Jacobs, Chipley, pro se.

No appearance for Appellee.

THOMPSON, Judge.

Alfred L. Jacobs appeals the summary de-  
nial of his post-conviction motion filed pursu-  
ant to Florida Rule of Criminal Procedure  
3.850. We affirm without prejudice to Ja-  
cobs' filing a petition for writ of habeas cor-  
pus in this court in compliance with Florida  
Rule of Appellate Procedure 9.140(j). See  
*Gibbs v. State*, 695 So.2d 949 (Fla. 4th DCA  
1997) (holding that rule 9.140(j) provides that  
petitions seeking belated appeals be filed in  
the appellate court to which the appeal was  
or should have been taken).

AFFIRMED without prejudice.

W. SHARP and ANTOON, JJ., concur.



3

Michael E. DOW, Appellant,

v.

STATE of Florida, Appellee.

No. 97-1352.

District Court of Appeal of Florida,  
Fifth District.

Dec. 5, 1997.

Appeal from the Circuit Court for Volusia  
County; Gayle S. Graziano, Judge.