ORIGINAL

IN THE SUPREME COURT OF FLORIDA

TIMOTHY LEWIS GAILLARD,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.
_____/

CASE NO. 92,809

JURISDICTIONAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF CITATIONS

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, Timothy Lewis Gaillard, 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

The pertinent history and facts are set out in the decision of the lower tribunal, which is attached as an appendix to the Respondent's brief.

SUMMARY OF ARGUMENT

The State agrees that, in the event this Court accepts jurisdiction over State v. Gloster, 703 So.2d 1104 (Fla. 1st DCA 1997), rev. pending, Fla. Sup. Ct. No. 92,235, it should also accept jurisdiction over the case at bar. The State adds, however, that the more appropriate remedy would have been for Petitioner to move to stay proceedings in the District Court, pursuant to State v. Roberts, 661 So.2d 821 (Fla. 1995), pending this Court's resolution of Gloster.

ARGUMENT

ISSUE I

WHETHER THE COURT SHOULD ACCEPT JURISDICTION TO REVIEW THE CONSTITUTIONALITY OF SECTION 322.34 (1)(C), FLORIDA STATUTES? (Restated)

Jurisdictional Criteria

Petitioner contends that this Court has jurisdiction pursuant to Article V, § 3(b)(3), Fla. Const. and Fla. R. App. P. 9.030(a)(2)(A)(i), which provide for review of District Court rulings on the constitutionality of a Florida Statute. Petitioner, in reliance upon this Court's opinion in Jollie v. State, 405 So.2d 418 (Fla. 1981), also contends that this Court should accept jurisdiction over the case at bar in the event it accepts jurisdiction over State v. Gloster, 703 So.2d 1104 (Fla. 1st DCA 1997), rev. pending, Fla. Sup. Ct. No. 92,235.

The State agrees that, in the event this Court accepts jurisdiction over Gloster, it should also accept jurisdiction over the case at bar. The State adds, however, that the more appropriate remedy would have been for Petitioner to move to stay proceedings in the District Court, pursuant to State v. Roberts, 661 So.2d 821 (Fla. 1995), pending this Court's resolution of Gloster. As this Court has noted:

> The situation presented in this cause ordinarily applies only to a limited class of cases. The problem arises from the practical situation which faces all appellate courts at one time or another-that is, how to dispose conveniently of multiple cases involving a single legal issue without disparately affecting the various litigants. Traditional practice in dealing with a common legal issue in multiple cases, both in district courts and here, has been to author an opinion for one case and summarily reference that opinion on

all the others. Being time- and laborsaving for a court, that practice should not be discouraged.

We believe, however, that there can be improvement in the procedure through which district courts can isolate for possible review in this Court those decisions which merely reference to a lead opinion, as we now have for review, as distinguished from those per curiam opinions which merely cite counsel-advising cases such as in Dodi Publishing. There are two prongs to the problem, and we believe each can be treated by the judges of the district courts without undue problems.

First, we suggest the district courts add an additional sentence in each citation PCA which references a controlling contemporaneous or companion case, stating that the mandate will be withheld pending final disposition of the petition for review, if any, filed in the controlling decision. In essence, this will "pair" the citation PCA with the referenced decision in the district court until it is final without review, or if review is sought, until that review is denied or otherwise acted upon by this Court. If review of the referenced decision is requested, the parties may seek consolidation here. In any event, the district courts' withholding of the mandates will dispose of the need for separate motions to stay mandates in those courts. This simple process, moreover, can be accomplished administratively in the district courts, in the clerks' offices, without significant activity by the judges either before or after the controlling decision is filed with or acted upon by this Court.

Jollie v. State, 405 So.2d at 420. This simple procedure prescribed by Jollie, if employed by Petitioner, would have served to conserve this Court's valuable resources.

CONCLUSION

Based on the foregoing reason, the State respectfully requests this Honorable Court accept jurisdiction only in the event it accepts jurisdiction over Gloster.

Respectfully submitted,

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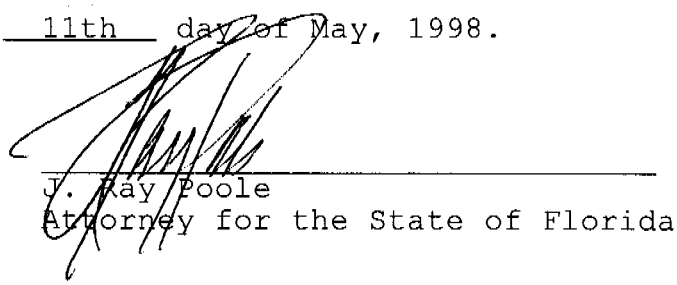
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing JURISDICTIONAL BRIEF OF RESPONDENT has been furnished by U.S. Mail to Glen P. Gifford, Esq., Assistant Public Defender, Leon County Courthouse, Suite 401, 301 South Monroe Street, Tallahassee, Florida 32301, this 11th day of May, 1998.



J. Ray Poole
Attorney for the State of Florida

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