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IN THE SUPREME COURT OF FLORIDA

CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

RICHARD E. AUSTIN, :

Petitioner, :

v. :

CASE NO. 93,274

STATE OF FLORIDA, :

Respondent. :

_____ /

JURISDICTIONAL BRIEF OF PETITIONER

ON DISCRETIONARY REVIEW
FROM THE FIRST DISTRICT COURT OF APPEAL

✓
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IN THE SUPREME COURT OF FLORIDA

RICHARD E. AUSTIN,)
)
)
 Petitioner,)
)
 v.) CASE NO. 93,274
)
 STATE OF FLORIDA,)
)
)
 Respondent.)
)
)
 _____)

JURISDICTIONAL BRIEF OF PETITIONER

STATEMENT OF THE CASE AND FACTS

In a per curiam affirmance without opinion, the district court cited to State v. Gloster, 703 So. 2d 1104 (Fla. 1st DCA 1997), rev. pending, Fla. Sup. Ct. No. 92,235.

SUMMARY OF THE ARGUMENT

Under Jollie v. State, 405 So. 2d 418 (Fla. 1981), the citation by the district court to a case now pending a decision whether to exercise discretionary review in this Court creates conflict jurisdiction under Article V, Section 3(b)(3), Florida Constitution and Florida Rule of Appellate Procedure 9.030(a)(2)(a)(iv). If this Court accepts Gloster v. State, Case No. 92,235, it should accept this case for review to promote uniformity of decisions and serve the interests of justice.

ARGUMENT

THE COURT SHOULD ACCEPT THIS CASE TO PROMOTE
UNIFORMITY OF DECISIONS.

In State v. Gloster, 703 So. 2d 1104 (Fla. 1st DCA 1997), rev. pending, Fla. Sup. Ct. No. 92,235, the First DCA held that § 324.34(1)(c), Florida Statutes (1995), does not violate the separation of powers required by Article III, Section 1 of the Florida Constitution. Gloster argued in the district court that the statute, which makes a third or subsequent offense of driving while license suspended a felony upon conviction, gave the trial judge unconstitutional power to determine whether the offense is a felony merely through the power to impose or withhold adjudication of guilt. Gloster is now before this Court; the court has deferred a decision on jurisdiction and the petitioner has filed the initial brief on the merits. In Gloster, the district court expressly declared valid a state statute, creating discretionary jurisdiction under Article V, Section 3(b)(3) of the Florida Constitution and Florida Rule of Appellate Procedure 9.030(a)(2)(A)(I).

In this case, the district court affirmed with a cite to Gloster, creating a type of discretionary conflict jurisdiction recognized by this Court in Jollie v. State, 405 So. 2d 418 (Fla. 1981). The issue in this case is the same as in Gloster. Petitioner prays that in the interests of justice it will accept this case to promote uniformity of decisions.

CONCLUSION

Based on the arguments contained herein and the authorities cited in support thereof, petitioner requests that this Honorable Court will exercise its discretion to accept jurisdiction and order briefing on the merits.

SIGNATURE OF ATTORNEY AND CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to J. Ray Poole, Assistant Attorney General, by delivery to The Capitol, Plaza Level, Tallahassee, FL, this 2nd day of July, 1998.

Respectfully submitted
& Served,



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COUNSEL FOR PETITIONER

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

RICHARD E. AUSTIN,
Appellant,

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION AND
DISPOSITION THEREOF IF FILED.

v.

CASE NO. 97-2731

STATE OF FLORIDA,
Appellee.

RECEIVED

MAY 26 1998

PUBLIC DEFENDER
3rd JUDICIAL CIRCUIT

Opinion filed May 27, 1998.

An appeal from the Circuit Court for Columbia County.
E. Vernon Douglas, Judge.

Nancy A. Daniels, Public Defender, and Glen P. Gifford, Assistant
Public Defender, Tallahassee, for appellant.

Robert A. Butterworth, Attorney General, and J. Ray Poole,
Assistant Attorney General, Tallahassee, for appellee.

PER CURIAM

AFFIRMED. State v. Gloster, 703 So. 2d 1174 (Fla. 1st DCA
1997).

KAHN, MICKLE and DAVIS, JJ., concur.