

TABLE OF CONTENTS

	<u>PAGE(S)</u>
TABLE OF CONTENTS	i
TABLE OF CITATIONS	ii
I STATEMENT OF THE CASE AND FACTS	1
II SUMMARY OF THE ARGUMENT	1
III ARGUMENT	
<u>ISSUE PRESENTED</u>	
THE COURT SHOULD ACCEPT THIS CASE TO PROMOTE UNIFORMITY OF DECISIONS.	2
IV CONCLUSION	3
CERTIFICATE OF SERVICE	3
APPENDIX	

TABLE OF CITATIONS

<u>CASE</u>	<u>PAGE(S)</u>
<u>Jollie v. State</u> 405 So.2d 418 (Fla. 1981)	1,2
<u>State v. Gloster</u> 703 So.2d 1174 (Fla. 1st DCA 1997), <u>review pending</u> , no. 92,235 (Fla. 1998)	1,2
 <u>STATUTES</u>	
Section 324.34(1)(c), Florida Statutes	2
 <u>CONSTITUTIONS</u>	
Article III, Section 1, Florida Constitution	2
Article V, Section 3(b)(3), Florida Constitution	1,2
 <u>OTHER AUTHORITIES</u>	
Rule 9.030(a)(2)(A)(i), Florida Rules of Appellate Procedure	2
Rule 9.030(a)(2)(A)(iv), Florida Rules of Appellate Procedure	1

IN THE SUPREME COURT OF FLORIDA

JORGE CASTRO, :
Petitioner, :
VS. : CASE NO.
STATE OF FLORIDA, :
Respondent. :
_____ :

JURISDICTIONAL BRIEF OF PETITIONER

I STATEMENT OF THE CASE AND FACTS

In a per curiam affirmance without opinion, the district court cited to State v. Gloster, 703 So.2d 1174 (Fla. 1st DCA 1997), review pending, no. 92,235 (Fla. 1998).

II SUMMARY OF THE ARGUMENT

Under Jollie v. State, infra, 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, § 3(b)(3), Florida Constitution and Rule 9.030(a)(2)(A)(iv), Florida Rules of Appellate Procedure. If this court accepts Gloster, supra, no. 92,235, it should also accept this case for review, in order to promote uniformity of decisions and to serve the interests of justice.

III ARGUMENT

ISSUE PRESENTED

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

In State v. Gloster, 703 So.2d 1174 (Fla. 1st DCA 1997), review pending, no. 92,235 (Fla. 1998), the First District Court held that section 324.34(1)(c), Florida Statutes (1995), does not violate the separation of powers required by article III, § 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 court unconstitutional power to determine whether the offense was a felony merely through the power to impose or withhold adjudication of guilt. Gloster is now before this court pending a decision on acceptance of discretionary review. In Gloster, the district court expressly declared valid a state statute, creating discretionary jurisdiction under article V, § 3(b)(3) of the Florida Constitution and Rule 9.030(a)(2)(A)(i), Florida Rules of Appellate Procedure.

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 requests therefore that, if this court accepts Gloster for review, it also accept this case to promote uniformity of decisions.

IV CONCLUSION

Based upon the foregoing argument, reasoning, and citation of authority, petitioner requests that this Court exercise its discretion to accept jurisdiction of this case and order briefing on the merits.

Respectfully submitted,

NANCY A. DANIELS
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SECOND JUDICIAL CIRCUIT



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ATTORNEY FOR PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to J. Ray Poole, Assistant Attorney General, by delivery to The Capitol, Plaza Level, Tallahassee, Florida, this 30 day of June, 1998.



KATHLEEN STOVER

IN THE SUPREME COURT OF FLORIDA

JORGE CASTRO, :
 :
 Petitioner, :
 :
 v. : CASE NO.
 :
 STATE OF FLORIDA, :
 :
 Respondent. :
 :
 _____/

APPENDIX

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

JORGE CASTRO,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

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

CASE NO. 97-287

Opinion filed March 25, 1998.

Appeal from the Circuit Court of Columbia County.
James R. Bean, Judge.

Nancy A. Daniels, Public Defender, and Kathleen Stover, Assistant
Public Defender, Tallahassee, for appellant.

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

PER CURIAM.

AFFIRMED.

KAHN, MICKLE and DAVIS, JJ., concur.

MAR 25 1998