

FILED *od*

SID J. WHITE

JAN 7 1998

IN THE SUPREME COURT OF FLORIDA

CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

JOHNATHAN JEFFRIES,

Petitioner,

v.

CASE NO.
5DCA CASE NO. 97-35

92,007

STATE OF FLORIDA,

Respondent.

_____ /

ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

JURISDICTIONAL BRIEF OF RESPONDENT

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

ROBIN A. COMPTON
ASSISTANT ATTORNEY GENERAL
Fla. Bar #846864
444 Seabreeze Boulevard
5th Floor
Daytona Beach, FL 32118
(904) 238-4990

COUNSEL FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF THE CASE AND FACTS 1

SUMMARY OF ARGUMENT 2

ARGUMENT 3

THIS COURT SHOULD DECLINE TO ACCEPT
JURISDICTION OF THIS CASE UNLESS IT ACCEPTS
JURISDICTION IN CARGLE 3

CONCLUSION 4

CERTIFICATE OF SERVICE 4

TABLE OF AUTHORITIES

CASES CITED:

<u>Cargle v. State,</u> 22 Fla. L. Weekly D2215 (Fla. 1st DCA September 18, 1997).	1,3
<u>Harrison v. Hyster Co.,</u> 515 So.2d 1279 (Fla. 1987)	3
<u>Jeffries v. State,</u> 22 Fla. L. Weekly D2557 (Fla. 5th DCA November 7, 1997)	1
<u>Jollie v. State,</u> 405 So.2d 418 (Fla. 1981)	3

STATEMENT OF THE CASE AND FACTS

Petitioner's conviction and sentence were affirmed without opinion by the Fifth District Court of Appeal. Jeffries v. State, 22 Fla. L. Weekly D2557 (Fla. 5th DCA November 7, 1997). In so holding, the district court found this case to be controlled by Cargle v. State, 22 Fla. L. Weekly D2215 (Fla. 1st DCA September 18, 1997).

SUMMARY OF THE ARGUMENT

In deciding this case, the district court relied on the First District's opinion in Cargle v. State. A petition for review of Cargle is presently pending before this Court. Should this Court grant review in Cargle, the Court would also have jurisdiction to review the instant case. However, in the absence of review of Cargle, 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 CARGLE.

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 the First District's decision in Cargle v. State, 22 Fla. L. Weekly D2215 (Fla. 1st DCA September 18, 1997). A petition for review of Cargle is presently pending before this Court. Should this Court grant review in Cargle, jurisdiction would be appropriate in this case as well.

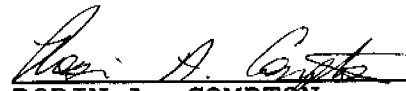
However, if this Court declines to accept jurisdiction in Cargle, then it must decline jurisdiction here also, as the district court's limited per curiam affirmed opinion does not facially conflict with any other case. See Harrison v. Hyster Co., 515 So.2d 1279 (Fla. 1987).

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 Cargle.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

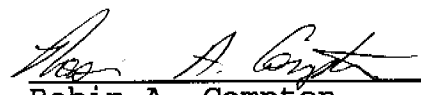


ROBIN A. COMPTON
ASSISTANT ATTORNEY GENERAL
Fla. Bar #846864
444 Seabreeze Boulevard
5th Floor
Daytona Beach, FL 32118
(904)238-4990

COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Jurisdictional Brief of Respondent has been furnished by interoffice mail/delivery to James R. Wulchak, Assistant Public Defender, this 6th day of January, 1998.



Robin A. Compton
Assistant Attorney General

IN THE SUPREME COURT OF FLORIDA

JOHNATHAN JEFFRIES,
Petitioner,

v.

CASE NO.
5DCA CASE NO. 97-35

STATE OF FLORIDA,
Respondent.
_____ /

APPENDIX

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

ROBIN A. COMPTON
ASSISTANT ATTORNEY GENERAL
Fla. Bar #846864
444 Seabreeze Boulevard
5th Floor
Daytona Beach, FL 32118
(904) 238-4990

COUNSEL FOR RESPONDENT

Compton
L97-1-1181

A/B 3-3-97

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

WIV

JULY TERM 1997

JOHNATHAN JEFFRIES,
Appellant,

NOT FINAL UNTIL THE TIME EXPIRES
TO FILE REHEARING MOTION, AND,
IF FILED, DISPOSED OF.

fw

v.

CASE NO. 97-35
L.C.# 96-1494

STATE OF FLORIDA,
Appellee.

Opinion Filed November 7, 1997

Appeal from the Circuit Court
for St. Johns County,
Robert K. Mathis, Judge.

James B. Gibson, Public Defender, and
Nancy Ryan, Assistant Public Defender,
Daytona Beach, for Appellant.

Robert A. Butterworth, Attorney General,
Tallahassee, and Robin A. Compton,
Assistant Attorney General, Daytona Beach,
for Appellee.

PER CURIAM.

AFFIRMED. *Cargle v. State*, 22 Fla. L. Weekly D2215 (Fla. 1st DCA Sept. 18,
1997).

GRIFFIN, C.J., PETERSON and THOMPSON, JJ., concur.

DAYTONA BEACH, FLORIDA
SEP 18 1997