

045

**FILED**

**SID J. WHITE**

**MAY 19 1998**

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

IN THE SUPREME COURT OF FLORIDA

ALFONZO EDWARDS,

Petitioner,

versus

CASE NO. 93,000

STATE OF FLORIDA,

Respondent.

APPEAL FROM THE CIRCUIT COURT  
IN AND FOR SUMTER COUNTY  
AND THE FIFTH DISTRICT COURT OF APPEAL

PETITIONER'S BRIEF ON JURISDICTION

JAMES B. GIBSON, PUBLIC DEFENDER  
SEVENTH JUDICIAL CIRCUIT

✓ BRYNN NEWTON  
ASSISTANT PUBLIC DEFENDER  
Florida Bar Number 175150  
112-A Orange Avenue  
Daytona Beach, Florida 32114-4310  
904-252-3367

ATTORNEY FOR PETITIONER

TABLE OF CONTENTS

	<u>PAGE NUMBER</u>
TABLE OF CITATIONS	ii
STATEMENT OF THE CASE	1
STATEMENT OF THE FACTS	2
SUMMARY OF ARGUMENT	4
ARGUMENT	
THE DISTRICT COURT OF APPEAL'S DECISION CITES AS CONTROLLING AUTHORITY THE DECISION IN <u>MADDOX</u> <u>v. STATE</u> , 23 Fla. L. Weekly D720 (Fla. 5th DCA March 13, 1998), WHICH IS PENDING REVIEW BY THIS HONORABLE COURT.	5
CONCLUSION	6
CERTIFICATE OF SERVICE	6

TABLE OF CITATIONS

PAGE NUMBER

CASES CITED:

Edwards v. State,  
23 Fla. L. Weekly D940 (Fla. 5th DCA April 9, 1998) 1, 5

Jollie v. State,  
405 So. 2d 418 (Fla. 1981) 5

Maddox v. State,  
23 Fla. L. Weekly D720 (Fla. 5th DCA March 13, 1998),  
review pending,  
Florida Supreme Court Case Number 92,805 5

STATEMENT OF THE CASE

Petitioner was charged by an information filed in the Circuit Court of Sumter County, Florida, with sale or delivery of cocaine within 1000 feet of a school and possession of cocaine with the intent to sell or deliver. (R 1) He was tried by a jury on January 6 and 7, 1997, and found guilty as charged. (T 138, 139; R 69, 70) On January 27, 1997, he was sentenced as an habitual offender to spend his life in prison for sale of cocaine and on February 3, 1997, he was sentenced to a concurrent term of 15 years in prison for possession of cocaine with the intent to sell or deliver. (S 26, 33; R 82-85)

Petitioner appealed and his convictions and sentences were affirmed by the Fifth District Court of Appeal on April 9, 1998. Edwards v. State, 23 Fla. L. Weekly D940 (Fla. 5th DCA April 9, 1998). (APPENDIX). His notice of seeking this Honorable Court's review was filed on May 8, 1998.

STATEMENT OF THE FACTS

About 8:30 in the evening of August 15, 1996, Troy Tinkham, a temporary employee with Corrections Corporation of America, and Corrections Officer Jennifer Swing were in the area of Northwest 4th Street in Webster to make drug buys under video and audio surveillance. (T 28, 29, 31, 32, 34, 44-46, 52, 58-60) They testified that Appellant approached the driver's side of their truck and Mr. Tinkham asked if he "had a twenty," in response to which, they said, Appellant told them to "do a block." (T 46-48, 52, 53, 60) When they drove back to the area, they said, Appellant came to the passenger's side of the truck and gave a rock of cocaine to Officer Swing in exchange for a twenty-dollar bill. (T 48, 54, 60) The video camera inside the truck was pointed toward the driver's side. (T 50, 60) Sumter County Sheriff's Deputy James Ferguson and Webster Police Officer Tony Stravino identified the man whom the video depicted as approaching the driver's side initially as Appellant. (T 35, 36, 40, 63)

Deputy Ferguson measured with a "traffic wheel" from the east edge of the pavement of Northwest 4th Street one thousand feet to a mark "four or five feet into the grass area of the school property." (T 37, 38, 40, 41) The principal of South Sumter Middle School was permitted to testify that he "understood" that

the property boundary of the school was the fence line, the point to which the school proprietors maintained the grounds. (T 64-68, 71) The trial court overruled defense counsel's objection to allowing the State to re-call Deputy Ferguson to display and explain the "traffic wheel" to the jurors<sup>1</sup>. (T 83-84)

Prior to trial, Appellant was offered in exchange for a guilty plea concurrent sentences for all of his pending cases, of eight or ten and a half years in prison, and the State would not seek habitual offender enhancement. (VD 4, 6, 17) Appellant desired instead to have a jury trial but he wanted to be represented by counsel who was retained after the jury had been selected and who requested a continuance of one or two days to prepare for trial. (VD 4-8, 10, 12, 15-18, 20) The motion for a continuance was denied and Appellant was represented at trial by court-appointed counsel. (VD 18-20) After the guilty verdicts, the State announced its intention to seek habitual offender sentencing and Appellant was later sentenced to life in prison as an habitual offender. (T 142; S 26, 33; R 82-85)

---

1

THE COURT: Because when they do those speeding tickets that they always say that if the court would allow them to measure it with a certified tape I've never heard that used in any other term but I'll allow the State to recall him. (T 84)

SUMMARY OF ARGUMENT

The Fifth District Court of Appeal's decision in this cause cites as controlling authority a decision which is currently pending review in this Honorable Court in Supreme Court Case Number 92,805.

ARGUMENT

THE DISTRICT COURT OF APPEAL'S  
DECISION CITES AS CONTROLLING  
AUTHORITY THE DECISION IN MADDOX v.  
STATE, 23 Fla. L. Weekly D720 (Fla.  
5th DCA March 13, 1998), WHICH IS  
PENDING REVIEW BY THIS HONORABLE  
COURT.

In its per curiam decision affirming Petitioner's convictions and sentences totalling life in prison, the Fifth District Court of Appeal wrote:

AFFIRMED. See Maddox v. State,  
23 Fla. L. Weekly D720 (Fla. 5th DCA  
March 13, 1998).

Edwards v. State, 23 Fla. L. Weekly D940 (Fla. 5th DCA April 9, 1998). (APPENDIX) Maddox v. State is currently pending review by this Honorable Court in Case Number 92,805. See Jollie v. State, 405 So. 2d 418 (Fla. 1981), wherein this Honorable Court held that a District Court of Appeal per curiam opinion which cites as controlling authority a decision that is either pending review in or has been reversed by the Supreme Court constitutes prima facie conflict and allows the Supreme Court to exercise its jurisdiction.

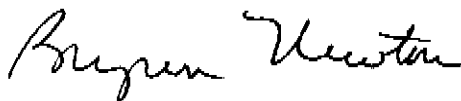


CONCLUSION

For the reasons expressed herein, Petitioner respectfully requests that this Honorable Court exercise its discretionary jurisdiction and grant review of the Fifth District Court of Appeal's decision in this cause.

Respectfully submitted,

JAMES B. GIBSON, PUBLIC DEFENDER  
SEVENTH JUDICIAL CIRCUIT



BRYNN NEWTON  
ASSISTANT PUBLIC DEFENDER  
Florida Bar Number 175150  
112-A Orange Avenue  
Daytona Beach, Florida 32114-4310  
904-252-3367

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to the Honorable Robert A. Butterworth, Attorney General, 210 N. Palmetto Avenue, Suite 447, Daytona Beach, Florida 32114, by delivery to his basket at the Fifth District Court of Appeal; and by mail to Mr. Alfonzo Edwards, 35 Apalachee Drive, Sneads, Florida 32460, this 18th day of May, 1998.



IN THE SUPREME COURT OF FLORIDA

ALFONZO EDWARDS,

Petitioner,

versus

CASE NO. 93,000

STATE OF FLORIDA,

Respondent.

APPEAL FROM THE CIRCUIT COURT  
IN AND FOR SUMTER COUNTY  
AND THE FIFTH DISTRICT COURT OF APPEAL

A P P E N D I X

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

JANUARY TERM 1998

ALFONSO EDWARDS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

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

CASE NO. 97-0478

---

Opinion filed April 9, 1998

Appeal from the Circuit Court  
for Sumter County,  
Hale R. Stancil, Judge.

James B. Gibson, Public Defender, and Brynn  
Newton, 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. See Maddox v. State, No. 96-3590 (Fla. 5th DCA March 13, 1998).

GRIFFIN, C.J., GOSHORN and ANTOON, JJ., concur.



OFFICE OF  
**PUBLIC DEFENDER**  
SEVENTH JUDICIAL CIRCUIT OF FLORIDA  
APPELLATE DIVISION  
112 Orange Avenue  
Daytona Beach, Florida 32114  
Telephone: (904) 252-3367  
SUNCOM 380-3758 FAX (904) 254-3943

JAMES R. WULCHAK  
Chief, Appellate Division

CHRISTOPHER S. QUARLES  
Chief, Capital Appeals

MARLEAH K. HILBRANT  
Administrative Assistant

May 18, 1998

**FILED**

**SID J. WHITE**

**MAY 19 1998**

**CLERK, SUPREME COURT**

By \_\_\_\_\_  
Chief Deputy Clerk

The Honorable Sid J. White  
Clerk of the Supreme Court  
500 South Duval Street  
Tallahassee, Florida 32399-1927

Re: Edwards v. State, Case Number 93,000

Dear Mr. White:

Enclosed are the original and five (5) copies of the Petitioner's brief on jurisdiction in the above-styled cause.

Sincerely,

A handwritten signature in cursive script that reads "Brynn Newton".

Brynn Newton  
Assistant Public Defender

Enclosure.