

FILED

SID J. WHITE

JUL 29 1998

IN THE SUPREME COURT OF FLORIDA

CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

SHAWN DAVID SPENCER,
Petitioner,

v.

S. Ct. Case No.: 93,430

STATE OF FLORIDA,

DCA No. 97-2064

Respondent.

_____ /

BRIEF OF RESPONDENT ON JURISDICTION

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STATEMENT OF THE CASE AND FACTS

Petitioner's sentence was affirmed on appeal based on the precedent of Maddox v. State, 23 Fla. L. Weekly D720 (Fla. 5th DCA March 13, 1998).

SUMMARY OF ARGUMENT

Since the decision of the Fifth District Court of Appeal relies on a case currently pending in this Court, this Court has jurisdiction to accept the appeal. Respondent requests the instant case be consolidated with Maddox v. State, Case Number 92,805.

ARGUMENT

THIS COURT HAS THE DISCRETION
TO ACCEPT JURISDICTION IN THE
INSTANT CASE.

In Jollie v. State, 405 So. 2d 418 (Fla. 1981), this Court held that when a district court issues a decision where the controlling precedent is presently pending in this Court, there is "prima facie express conflict (which) allows this court to exercise its jurisdiction." Id. at 420. The decision of the Fifth District Court of Appeal in the instant case relied on Maddox v. State, 23 Fla. L. Weekly D720 (Fla. 5th DCA March 13, 1998), which is currently pending review before this Court. This Court therefore has discretion to entertain the review sought by Petitioner.

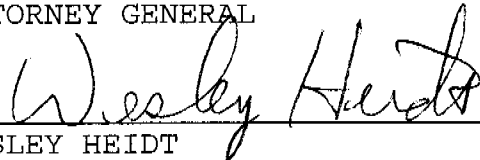
Respondent respectfully requests this Court consolidate the instant case with Maddox v. State, Case Number 92,805.

CONCLUSION

Based on the arguments and authorities presented herein, the State respectfully requests this honorable Court accept jurisdiction in this case pursuant to the holding in Jollie and consolidate the instant appeal with Maddox v. State, Case Number 92,805.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

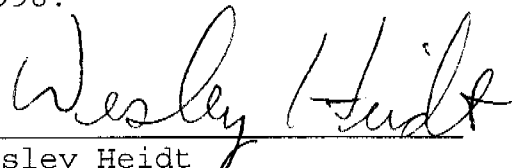


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Brief of Respondent on Jurisdiction has been furnished by delivery via the basket of the Public Defender at the Fifth District Court of Appeal to Lyle Hitchens, Assistant Public Defender, this 27th day of July 1998.



Wesley Heidt
Counsel for Respondent

IN THE SUPREME COURT OF FLORIDA

SHAWN DAVID SPENCER,)
)
 Petitioner/Appellant,)
)
 vs.) S.CT. CASE NO. _____
)
 STATE OF FLORIDA,) DCA CASE NO. 97-2064
)
 Respondent/Appellee.)
 _____)

A P P E N D I X

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT
JANUARY TERM 1998

SHAWN D. SPENCER,
Appellant,

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

v.

CASE NO. 97-2064 ✓

97-843
Cyle

STATE OF FLORIDA,
Appellee.

RECEIVED

JUN 22 1998

Opinion filed June 12, 1998 ✓

Appeal from the Circuit Court
for Osceola County,
Anthony H. Johnson, Senior Judge.

PUBLIC DEFENDER'S OFFICE
5th CIR. APP. DIV.

James B. Gibson, Public Defender,
and Lyle Hitchens, Assistant Public
Defender, Daytona Beach, for Appellant.

Robert A. Butterworth, Attorney
General, Tallahassee, and Jennifer
Meek, Assistant Attorney General,
Daytona Beach, for Appellee.

PER CURIAM.

AFFIRMED on the authority of Maddox v. State, 23 Fla. L. Weekly D720 (Fla. 5th
DCA March 13, 1998), but see Harriel v. State, 23 Fla. L. Weekly D967 (Fla. 4th DCA April
15, 1998).

DAUKSCH, HARRIS and PETERSON, JJ., concur.