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SID J. WHITE

SEP 24 1998

CLERK, SUPREME COURT
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IN THE SUPREME COURT OF FLORIDA

DARRYLE T. COOK,
Petitioner,

v.

CASE NO. 93,781

STATE OF FLORIDA,
Respondent.

_____ /

BRIEF OF RESPONDENT ON JURISDICTION

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COOK V. STATE, Case No.: 93,781

CERTIFICATE OF TYPE SIZE AND STYLE

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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.

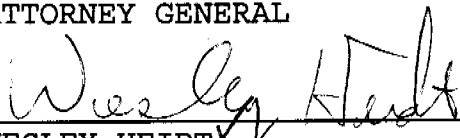
Respondent respectfully requests this Court consolidate the instant case with Maddox v. State, Case Number 92,805.

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

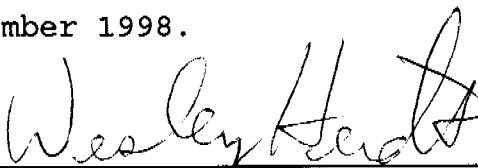


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CERTIFICATE OF SERVICE

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 21st day of September 1998.



Wesley Heidt
Counsel for Respondent