

**ORIGINAL**

IN THE SUPREME COURT OF FLORIDA

**FILED**

SID J. WHITE

OCT 28 1998

CLERK SUPREME COURT  
By BWR  
Chief Deputy Clerk

CHARLES ARTHUR JERRY,

Petitioner,

v.

CASE NO. 93,828

STATE OF FLORIDA,

Respondent.

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RESPONDENT'S AMENDED BRIEF ON JURISDICTION

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STATEMENT OF THE CASE AND FACTS

Respondent rejects Petitioner's statement of the case and facts, as it contains facts from the trial court proceedings. For purposes of determining conflict jurisdiction, the Supreme Court is limited to the facts which appear within the four corners of the decision allegedly in conflict. Hardee v. State, 534 So. 2d 706, 708 n. (Fla. 1988); Reaves v. State, 485 So. 2d 829, 830 n. 3 (Fla. 1986). Respondent therefore substitutes the following facts, taken from the decision allegedly in conflict:

The Fifth District Court of Appeal affirmed Petitioner's sentence without written opinion, citing as authority Maddox v. State, 708 So. 2d 617 (Fla. 5th DCA 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.

STATEMENT CERTIFYING FONT

The undersigned hereby certifies that this brief is submitted using Courier New font, 12 point type.

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, 708 So. 2d 617 (Fla. 5th DCA 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,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Amended 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 Rosemarie Farrell, Assistant Public Defender, this 26 day of October, 1998.

Allison Morris Jr

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