

Response?

FILED

SID J. WHITE

DEC 29 1998

IN THE SUPREME COURT OF FLORIDA

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

CASE NO. 94,302

FOURTH DCA CASE NO. 97-3962

FLA. BAR NO. 221511

STATE OF FLORIDA,

Petitioner,

v.

SHARI LACKMAN,

Respondent.



**MOTION TO PERMIT RESPONDENT LACKMAN TO
ADOPT THE BRIEFS ON THE MERITS OF
PETITIONER ROAN PEART IN CASE NUMBER 92,629**

Respondent, Shari Lackman, by and through her undersigned attorney files this, her Motion To Permit Respondent Lackman To Adopt The Briefs On The Merits Of Petitioner Roan Peart In Case Number 92,629. As grounds therefore, it is submitted that:

1. This case is before this Court upon a Notice To Invoke Discretionary Jurisdiction filed by petitioner, State of Florida.
2. On November 13, 1998, this Court entered its Order Postponing Decision On Jurisdiction And Briefing Schedule.

3. In accordance with that Order, on or about December 8, 1998, petitioner filed and served its initial brief on the merits.

4. In its brief, petitioner seeks review of an opinion of the Fourth District Court of Appeal in *State v. Lackman*, 719 So.2d 964 (Fla. 4th DCA 1998) [Case No. 97-3962], affirming the vacating of respondent Lackman's plea and sentence on the authority of *Gregersen v. State*, 714 So. 2d 1195 (Fla. 4th DCA 1998). In its opinion, the Fourth District also certified conflict with *Peart v. State*, 705 So. 2d 1059 (Fla. 3d DCA 1998), *rev. granted*, No. 92,629 (Fla. Sept. 14, 1998).¹

5. The issues raised by petitioner in this case (to wit: whether *coram nobis* is a proper remedy to address violations of Fla.R.Crim.P. 3.172 (c) (8); whether the availability of such relief should be subject to a two (2) year period of limitations as is relief under Fla.R.Crim.P. 3.850; and the degree of prejudice, if any, which must be shown in order to procure relief), are identical to those raised in *Peart*². In fact, petitioner has notified this Court by pleading filed on November 6, 1998 that *Peart* (as well as *Gregersen*) involves issues similar to those of the instant case.

6. Undersigned counsel has been following the progress of *Peart* both before the Third District Court of Appeal and before this Court. Petitioner Peart has already filed both his initial and reply briefs before this Court. The arguments raised in Peart's briefs

¹ By order entered on December 3, 1998, this Court granted review of *Gregersen*. See Case No. 93,801.

² In its brief in this case, in addition to these legal arguments, petitioner also attempts to argue that there was in fact compliance with Fla.R.Crim.P. 3.172 (c) (8) in the trial court. However, that is a factual issue which has been decided adversely to petitioner in both the trial court and the Fourth District Court of Appeal. That argument is not directed to the central issues before this Court and was certainly not the basis of conflict certification by the District Court.

are identical to those which would be raised by respondent herein in replying to the arguments made by petitioner in this case.

7. Accordingly, it is submitted that no useful purpose would be served by respondent filing a brief on the merits. Instead, respondent seeks permission of this Court to adopt those briefs previously filed by petitioner Peart in Case No. 92,629. Allowing respondent to adopt the Peart briefs is in the best interests of judicial economy and will not prejudice respondent's position before this Court. As noted, the issues and arguments are virtually identical.

8. Should this motion be granted, respondent will forthwith serve on petitioner copies of the briefs filed in this court by Peart, as well as a copy of the State's brief on the merits in *Peart*.

WHEREFORE, respondent, Shari Lackman respectfully requests that this Honorable Court permit her to adopt the briefs of petitioner Roan Peart in Case No. 92,629 as her brief on the merits.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing motions was mailed
this 22 day of December, 1998 to:

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HARRY M. SOLOMON