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IN THE SUPREME COURT OF FLORIDA

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GUY HAMMOND,

Petitioner,

v.

FSC No. 94,780

STATE OF FLORIDA,

Respondent.

DISCRETIONARY REVIEW OF DECISION OF THE SECOND
DISTRICT COURT OF APPEAL
STATE OF FLORIDA

RESPONDENT'S BRIEF ON JURISDICTION

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SECOND DISTRICT

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STATEMENT REGARDING TYPE

The size and style of type used in this brief is 12 point Courier New, a font that is not proportionately spaced.

STATEMENT OF THE CASE AND FACTS

Petitioner's statement of the case and facts is substantially accurate for the purpose of this jurisdictional brief.

SUMMARY OF THE ARGUMENT

This Court does not have jurisdiction to hear the instant case because the district court opinion does not expressly and directly conflict with the opinion cited by Petitioner.

ARGUMENT

BECAUSE THE OPINION OF THE SECOND DISTRICT COURT OF APPEAL DOES NOT "EXPRESSLY AND DIRECTLY" CONFLICT WITH THE PRIOR DECISIONS OF ANOTHER DISTRICT COURT OF APPEAL OR THE SUPREME COURT ON THE SAME QUESTION OF LAW, THIS COURT SHOULD DECLINE TO EXERCISE DISCRETIONARY JURISDICTION TO CONSIDER THIS APPEAL.

Petitioner asserts that the Court has jurisdiction to hear his case because the district court's decision conflicts with Trotter v. State, 576 So. 2d 691 (Fla. 1990). Respondent disagrees, asserting that this Court should not entertain jurisdiction in the instant case because the cases cited by Petitioner are not in direct and express conflict with the second district's decision in his case.

Article V, § 3(b) (3) of the Florida Constitution, and **Florida Rule of Appellate Procedure 9.030(a) (2) (A) (iv)**, provide that this Court may review decisions of a district court of appeal "that expressly and directly conflict with a decision of . . . the supreme court on the same question of law." The alleged conflict between decisions "must be express and direct" and "must appear within the four corners of the majority decision." Reaves v. State, 485 So. 2d 829, 830 (Fla. 1986). The Court has explained that "express" means "to represent in words" and "to give expression to." Jenkins v. State, 385 So. 2d 1356, 1359 (Fla.

1980).

In Ansin v. Thurston, 101 So. 2d 808 (Fla. 1958), the Court explained the nature of the conflict required:

"A conflict of decisions . . . must be on a question of law involved and determined, and such that one decision would overrule the other if both were rendered by the same court; in other words, the decisions must be based practically on the same state of facts and announce antagonistic conclusions." 21 C.J.S. Courts s 462.

Ansin, 101 So. 2d at 811. Thus, for there to be direct conflict the factual scenarios in each case must be identical, with the respective courts reaching opposing holdings.

"A limitation of review to decisions in 'direct conflict' clearly evinces a concern with decisions as precedents as opposed to adjudications of the rights of particular litigants." Id. As this Court also pointed out in Ansin:

[i]t was never intended that the district courts of appeal should be intermediate courts. The revision and modernization of the Florida judicial system at the appellate level was prompted by the great volume of cases reaching the Supreme Court and the consequent delay in the administration of justice. The new article embodies throughout its terms the idea of a Supreme Court which functions as a supervisory body in the judicial system for the State, exercising appellate power in certain specified areas essential to the settlement of issues of public importance and the preservation of uniformity of principle and practice, with review by the district courts in most instances being final and absolute.

Ansin, 101 So. 2d at 810.

A review of the second district's decision below indicates a lack of direct and express conflict when compared with Trotter, supra. In Trotter this Court explained what a defendant had to do to show reversible error when a trial court refused to excuse a prospective juror for cause. The Second District did not stray from the holding in Trotter, but clarified that to preserve that type of error the objection should place the trial court on notice of a possible error, thereby providing an opportunity to correct it. In the instant case, as detailed by the district court Petitioner failed to preserve the issue for review.¹ Since the Second District properly applied Trotter, there is no conflict. See Dep't of Health and Rehabilitative Serv. v. Nat'l Adoption Counseling Serv., Inc., 498 So. 2d 888 (Fla. 1986) (in which the Court stated that "implied" conflict may not serve as a basis for jurisdiction).

Respondent respectfully requests that the Court decline to exercise its discretionary jurisdiction in the instant case as Petitioner has failed to demonstrate the existence of direct and express conflict with the decisions of this Court.

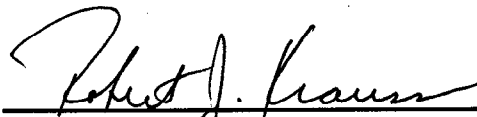
¹It should be noted that Petitioner also failed to raise any objection prior to accepting the jury. Joiner v. State, 618 so. 2d 174 (Fla. 1993).

CONCLUSION

Based upon the foregoing reasons, arguments, and citations to authority, this Honorable Court should decline to exercise jurisdiction to consider the instant appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing jurisdictional brief has been furnished by U.S. regular mail to Timothy J. Ferreri, Assistant Public Defender, P.O. Box 9000-- Drawer PD, Bartow, Florida 33831, on this 11th day of February, 1999.



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