

0915

FILED

SID J. WHITE

MAR 15 1999

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v.

CASE NO.: 94,832

SHAWN SEAY,

Respondent.

**ON NOTICE TO INVOKE DISCRETIONARY JURISDICTION TO
REVIEW A DECISION OF THE SECOND DISTRICT COURT OF APPEAL**

MR. SEAY'S BRIEF ON JURISDICTION

✓
TERRENCE E. KEHOE
LAW OFFICES OF TERRENCE E. KEHOE
Tinker Building
18 West Pine Street
Orlando, Florida 32801
407-422-4147
407-849-6059 (FAX)

CERTIFICATE OF TYPE SIZE AND STYLE

This brief is typed in 14 point CG TIMES proportional space font.

TABLE OF CONTENTS

	<u>PAGE</u>
CERTIFICATE OF TYPE SIZE	i
TABLE OF CONTENTS	ii
TABLE OF CITATIONS	iii
PRELIMINARY STATEMENT	1
STATEMENT OF THE CASE AND FACTS	1
SUMMARY OF THE ARGUMENTS	1
ARGUMENTS	2
A. STATE’S NOTICE AND BRIEF ARE PREMATURE	2
B. SECOND DISTRICT’S DECISION CONFLICTS WITH DECISIONS OF THIRD DISTRICT	3
CONCLUSION	3
CERTIFICATE OF SERVICE	4

TABLE OF CITATIONS

<u>CASES</u>	<u>PAGE</u>
<u>Portu v. State,</u> 654 So.2d 169 (Fla. 3d DCA 1995)	3
<u>Seay v. State,</u> ___ So.2d ___ (Fla. 2d DCA 2/3/99)[24 Fla. L. Weekly D382]	1
<u>Thompson v. State,</u> Case No. 92,831	3

OTHER AUTHORITIES

Fla.R.App.P. 9.020(h)	3
Fla.R.App.P. 9.120(b)	2

PRELIMINARY STATEMENT

In this brief, the petitioner, State of Florida, will be referred to as “the state.” The respondent, Shawn Seay, will be referred to as “Mr. Seay.”

The record on appeal in this case consist of three volumes. References to the record will be to the roman numeral of the volume, followed by the appropriate page reference therein.

STATEMENT OF THE CASE AND FACTS

In his appeal to the Second District, Mr. Seay contested the sufficiency of the evidence to prove that he was guilty of burglary. That issue is still pending before the Second District in Mr. Seay’s Motion for Rehearing, Rehearing En Banc, or Certification to the Florida Supreme Court.

The Second District’s opinion is also found at Seay v. State, 24 Fla. L. Weekly D382.

SUMMARY OF THE ARGUMENTS

Without waiving Mr. Seay’s argument that the state’s notice is premature, Mr. Seay agrees that this Court does have discretionary jurisdiction to review the decision of the Second District Court of Appeal in this case, because the decision does expressly and directly conflict with decisions of the Third District Court of Appeal on the same issue of law.

ARGUMENTS

A. STATE'S NOTICE AND BRIEF ARE PREMATURE

On February 3, 1999 the Second District issued its opinion in this case, a copy of which is found in the petitioner's appendix. At the top of that opinion, it states that the opinion is not final until the time expires to file a rehearing motion and, if filed, that motion is determined.

The next day, February 4, 1999, the state served a notice to invoke this Court's discretionary jurisdiction, which notice was filed in the district court on February 5, 1999. On February 11, 1999, Mr. Seay served his Motion for Rehearing, Rehearing En Banc, or Certification to the Florida Supreme Court. The state then served its brief on jurisdiction on February 16, 1999. Mr. Seay's Motion for Rehearing, Rehearing En Banc, or Certification to the Florida Supreme Court, has not yet been ruled on by the Second District.

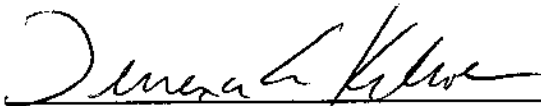
The state's notice is, at the least, premature, and the worst, a legal nullity depriving the Court of jurisdiction.

Fla.R.App.P. 9.120(b) permits the following of a notice to invoke the discretionary jurisdiction of the Supreme Court within 30 days of the rendition on the district court's opinion sought to be reviewed. In Mr. Seay's case, the Second District has not yet rendered its opinion, for the February 3 opinion is not final. See

case is premature and must be stricken, and this Court is without jurisdiction at this time. Otherwise, Mr. Seay agrees that this Court has the discretion to accept jurisdiction in this matter.

Respectfully submitted this 12th of March, 1999, at Orlando, Orange County, Florida.

LAW OFFICES OF TERRENCE E. KEHOE
Tinker Building
18 West Pine Street
Orlando, Florida 32801
407-422-4147
407-849-6059 (FAX)



TERRENCE E. KEHOE
Florida Bar No. 330868

COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of March, 1999, a true copy of the foregoing, was furnished by United States Mail to **Angela D. McCravy, Assistant Attorney General**, 2002 North Lois Avenue, Seventh Floor, Tampa, Florida 33607 and the original and 5 copies have been sent by United States Mail to Sid J. White, Clerk of Court, Supreme Court Building, 500 S. Duval Street, Tallahassee, Florida 32399-1927.



TERRENCE E. KEHOE

