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APR 19 1999

CLERK SUPREME COURT

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IN THE SUPREME COURT OF FLORIDA

STEVIE L. MCKNIGHT,

Petitioner

vs.

Case No. 95,091

STATE OF FLORIDA,

Respondent

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

BRIEF OF RESPONDENT ON JURISDICTION

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**CERTIFICATE OF TYPE SIZE AND STYLE**

This brief is presented in 12 point Courier New type.

**STATEMENT OF THE CASE AND FACTS**

Appellee accepts Appellant's Statement of the Case and Facts for the purposes of this appeal.

SUMMARY OF THE ARGUMENT

Appellant has failed to show express and direct conflict between the Second and Fifth District Courts of Appeal.

## ARGUMENT

**NO CONFLICT HAS BEEN SHOWN BETWEEN THE  
INSTANT OPINION AND ANY OF THE OTHER DISTRICT  
COURTS OF APPEAL. (RESTATED)**

Appellant suggests that a conflict exists between the Second and Fifth District Courts of Appeal. He contends that Thompson v. State, 24 Fla. L. Weekly D209 (Fla. 2d DCA Jan 15, 1999) conflicts not only with this Court's opinion in White v. State, 714 So. 2d 440( Fla. 1998), but also with the Fifth District's opinion in Williams v. State, 24 Fla. L. Weekly D215 (Fla. 5th DCA Jan 15, 1999). The State would suggest that the opinions identified by Appellant do not expressly and directly conflict to the extent suggested by Appellant, and that there is no need for this Court to exercise its discretionary powers of review.

The Second District plainly stated in Thompson that its holding was based upon its previous decision in State v. Davidson, 666 So. 2d 941 (Fla. 2d DCA 1995), wherein the Court found that the assessment of 25 points on the guidelines scoresheet for possession of a semi-automatic firearm was proper and not precluded by this Court's decision in White, because the additional points were intended to distinguish between types of firearms. Davidson, id. While it is true that the 5th District ruled differently in Williams, this case is factually distinguishable because the Williams defendant was facing only

the firearms possession charge, whereas in the instant case the Appellant was charged with two separate felonies- aggravated assault and felonious possession of a firearm. The State would suggest that where multiple felonies are being considered, that it is proper, as the Second District found, to assess the additional guidelines points required by Fla. R. Crim. Proc. 3.702(d)(12).

Because the decision of the Second District is so plainly correct, and because there is no express and direct conflict apparent, it would be proper for this Court to deny Appellant the relief he seeks.

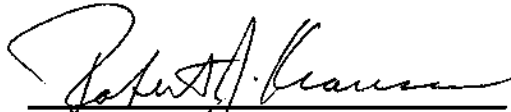


CONCLUSION

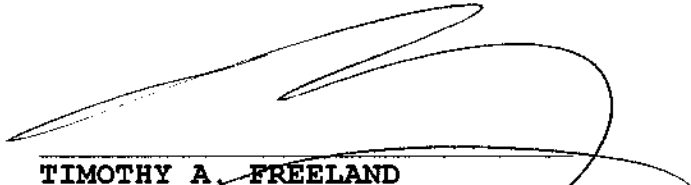
WHEREFORE based on the foregoing arguments, citations of authority and references to the record, this Court should decline to exercise its jurisdiction.

Respectfully Submitted

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Megan Olson, Assistant Public Defender, Criminal Justice Center, 14250 49th Street North, Clearwater, Florida 33762 this 16<sup>th</sup> day of April, 1999.

  
OF COUNSEL FOR RESPONDENT