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IN THE SUPREME COURT OF FLORIDA

TOMMY TERRY,

Petitioner,

v.

S. Ct. Case No.: 95,149

STATE OF FLORIDA,

DCA No.: 98-1488

Respondent.

_____ /

BRIEF OF RESPONDENT ON JURISDICTION

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STATEMENT OF THE CASE AND FACTS

Petitioner's sentence was affirmed on appeal based on the precedent of Maddox v. State, 708 So. 2d 617 (Fla. 5th DCA 1998), rev. granted, No. 92,805 (Fla. July 7, 1998).

CERTIFICATE OF TYPE SIZE AND STYLE

The type size and style used in this brief is 12 point Courier New.

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.

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), rev. granted, No. 92,805 (Fla. July 7, 1998), which is currently pending review before this Court.¹ This Court therefore has discretion to entertain the review sought by Petitioner.

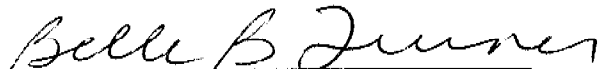
¹This Court has sua sponte consolidated the cases of Maddox v. State, case no.: 92,805; Edwards v. State, case no: 93,000; Speights v. State, case no.: 93,207; and Hyden v. State, case no.: 93,966. These cases have been set for oral argument on May 11, 1999.

CONCLUSION

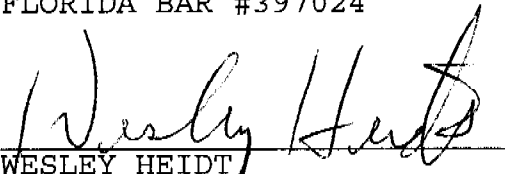
Based on the arguments and authorities presented herein, the State respectfully requests this Honorable Court accept jurisdiction in this case pursuant to the holding in Jollie.

Respectfully submitted,

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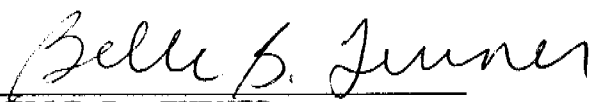


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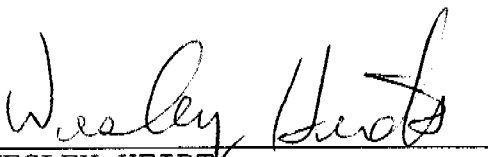
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copy of the above Jurisdictional Brief has been furnished by hand delivery to the Public Defender's mail box at the Fifth District Court of Appeal, to Stephanie H. Park, 112 Orange Ave. Ste A., Daytona Beach, 32114, this 5th day of April 1999.



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