

**ORIGINAL**

IN THE SUPREME COURT OF FLORIDA

**FILED**

SID J. WHITE

**APR 23 1999**

CLERK, SUPREME COURT  
By *Barry*  
Chief Deputy Clerk

CARLOS GARCIA, )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 STATE OF FLORIDA, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

FSC Case No. *95,407*

Fifth DCA Case No. 98-1066

ON DISCRETIONARY REVIEW FROM  
THE FIFTH DISTRICT COURT OF APPEAL

**PETITIONER'S BRIEF ON JURISDICTION**

JAMES B. GIBSON  
PUBLIC DEFENDER  
SEVENTH JUDICIAL CIRCUIT

NANCY RYAN  
ASSISTANT PUBLIC DEFENDER  
FLORIDA BAR NO. 0765910  
112 Orange Avenue, Suite A  
Daytona Beach, FL 32114  
(904) 252-3367  
COUNSEL FOR PETITIONER

## TABLE OF CONTENTS

	<u>PAGE NO.</u>
TABLE OF CONTENTS	i
TABLE OF CITATIONS	ii
STATEMENT OF THE CASE AND FACTS	1
SUMMARY OF ARGUMENT	3
ARGUMENT	4
CONCLUSION	5
CERTIFICATE OF SERVICE	6

## TABLE OF CITATIONS

### PAGE NO.

#### CASES CITED:

##### Jollie v. State

405 So. 2d 418 (Fla. 1981)

4

##### Maddox v. State

708 So. 2d 617 (Fla. 5th DCA)

rev. granted, 719 So. 2d 169 (Fla. 1998)

2-4

IN THE SUPREME COURT OF FLORIDA

CARLOS GARCIA,	)	
	)	
Petitioner,	)	
	)	FSC Case No.
vs.	)	
	)	Fifth DCA Case No. 98-1066
STATE OF FLORIDA,	)	
	)	
Appellee.	)	
_____	)	

**STATEMENT OF CASE AND FACTS**

In the Circuit Court for the Seventh Judicial Circuit in St. Johns County, the petitioner was convicted of aggravated battery and sentenced to prison in case no. CF97-1581 on March 18, 1998. (R 108, 118-23) His offense was alleged to have taken place on May 4, 1997, and he was sentenced pursuant to the 1995 sentencing guidelines. (R 1, 128-29) The petitioner filed timely notice of appeal from the judgment and sentencing orders on April 14, 1998. (R 136) On appeal to the Fifth District Court of Appeal in its case no. 98-1066, he argued that he should have been sentenced pursuant to the 1994 sentencing guidelines because the 1995 guidelines were enacted in violation of the prohibition against laws

embracing more than one subject. The District Court, in its decision issued March 26, 1999, affirmed the conviction and sentence in an opinion which stated only "AFFIRMED on the authority of Maddox v. State, 708 So. 2d 617 (Fla. 5th DCA), rev. granted, 719 So. 2d 169 (Fla. 1998)." The petitioner filed his Notice of Intent to Invoke this Court's Jurisdiction on April 12, 1999.

## **SUMMARY OF ARGUMENT**

The decision in this case was “paired for review” by the District Court with a case now pending in this court. That case, Maddox v. State, 708 So. 2d 617 (Fla. 5th DCA), rev. granted, 719 So. 2d 169 (Fla. 1998), has to do with the scope of jurisdiction in criminal appeals. The single issue argued on the merits in the appeal of this case, the constitutionality of the 1995 sentencing guidelines, is also pending review in this court.

## ARGUMENT

THE DECISION IN THIS CASE WAS “PAIRED FOR REVIEW” BY THE DISTRICT COURT WITH THE PENDING CASE MADDOX V. STATE, 708 SO. 2D 617 (FLA. 5TH DCA), REV. GRANTED, 719 SO. 2D 169 (FLA. 1998).

In Jollie v. State, 405 So. 2d 418 (Fla. 1981), this court held that similarly situated litigants should have similar avenues of review in the Florida court system. Pursuant to the procedure outlined in Jollie, the Fifth District Court in this case “paired” this case for review with the pending case Maddox v. State, 708 So. 2d 617 (Fla. 5th DCA), rev. granted, 719 So. 2d 169 (Fla. 1998), and this court should take jurisdiction for that reason. Maddox, as this court well knows, involves interpretation of the Criminal Appeal Reform Act and will determine to a great extent the scope of review in criminal cases in the District Courts of Appeal.

The single issue argued on the merits in the appeal of this case, the constitutionality of the 1995 sentencing guidelines, is also pending review in this court in Heggs v. State, no. 93,851. This court should take jurisdiction of this case to resolve both the procedural and substantive matters at issue.

**CONCLUSION**

This Court has discretionary jurisdiction to review the decision below and should exercise that jurisdiction to consider the merits of Petitioner's argument.

Respectfully submitted,

JAMES B. GIBSON  
PUBLIC DEFENDER  
SEVENTH JUDICIAL CIRCUIT



---

NANCY RYAN  
ASSISTANT PUBLIC DEFENDER  
Florida Bar No. 0765910  
112 Orange Avenue, Suite A  
Daytona Beach, FL 32114  
(904) 252-3367

COUNSEL FOR PETITIONER



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been hand delivered to the Honorable Robert A. Butterworth, Attorney General, 444 Seabreeze Boulevard, 5th Floor, Daytona Beach, FL 32118, via his basket at the Fifth District Court of Appeal and mailed to Mr. Carlos Garcia, DC #V05431, Taylor Correctional Institution, P.O. Box 1728, Perry, FL 32348, this 22nd day of April, 1999.



---

NANCY RYAN  
ASSISTANT PUBLIC DEFENDER

**CERTIFICATE OF FONT**

I hereby certify that the size and style of type used in this brief is point proportionally spaced CG Times, 14 pt.



---

NANCY RYAN  
ASSISTANT PUBLIC DEFENDER