

ORIGINAL

FILED

SID J. WHITE

MAY 14 1999

CLERK, SUPREME COURT
By *[Signature]*
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

CARLOS GARCIA,

Petitioner,

v.

CASE NO. 95,407

STATE OF FLORIDA,

Respondent.

_____ /

BRIEF OF RESPONDENT ON JURISDICTION

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

BELLE B. TURNER
ASSISTANT ATTORNEY GENERAL
FLORIDA BAR #397024

WESLEY HEIDT
ASSISTANT ATTORNEY GENERAL
FLORIDA BAR #773026

OFFICE OF THE ATTORNEY GENERAL
FIFTH FLOOR
444 SEABREEZE BLVD.
DAYTONA BEACH, FL 32118
(904) 238-4990

COUNSEL FOR RESPONDENT

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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), rev. granted, 718 So. 2d 169 (Fla. 1998).

CERTIFICATE OF TYPE SIZE AND STYLE

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

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), rev. granted, 718 So. 2d 169 (Fla. 1998), which is currently pending review before this Court. This Court therefore has discretion to entertain the review sought by Petitioner.

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,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

Belle B Turner

BELLE B. TURNER
ASSISTANT ATTORNEY GENERAL
FLORIDA BAR #397024

Wesley Heidt

WESLEY HEIDT
ASSISTANT ATTORNEY GENERAL
FLORIDA BAR #773026
FIFTH FLOOR
444 SEABREEZE BLVD.
DAYTONA BEACH, FL 32118
(904) 238-4990

COUNSEL FOR APPELLANT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above Brief has been furnished by delivery via the basket of the Office of the Public Defender at the Fifth District Court of Appeal to Nancy Ryan, counsel for the Petitioner, 112 Orange Ave. Ste A., Daytona Beach, FL 32114, this 12th day of May 1999.

Belle B Turner

BELLE B. TURNER
ASSISTANT ATTORNEY GENERAL

Wesley Heidt

WESLEY HEIDT
ASSISTANT ATTORNEY GENERAL

98-378JR

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JANUARY TERM 1999

CARLOS D. GARCIA, V,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

NOT FINAL UNTIL THE TIME EXPIRES
TO FILE REHEARING MOTION, AND,
IF FILED, DISPOSED OF.

CASE NO. 98-1066

RECEIVED

MAR 26 1999

PUBLIC DEFENDER'S
7th CIR. APP. DIV.

Opinion filed March 26, 1999

Appeal from the Circuit Court
for St. Johns County,
Robert K. Mathis, Judge.

James B. Gibson, Public Defender,
and Nancy Ryan, Assistant Public
Defender, Daytona Beach, for Appellant.

Robert A. Butterworth, Attorney
General, Tallahassee, and David H.
Foxman, Assistant Attorney General,
Daytona Beach, for Appellee.

PER CURIAM.

AFFIRMED on the authority of Maddox v. State, 708 So. 2d 617 (Fla. 5th DCA),
granted, 719 So. 2d 169 (Fla. 1998).

DAUKSCH, COBB and SHARP, W., JJ., concur.