

ORIGINAL

FILED
DEBBIE CAUSSEUX

JUN 23 1999

IN THE SUPREME COURT OF FLORIDA

CLERK, SUPREME COURT
By DAW

STEPHEN J. KLARICH,
Petitioner,

v.

CASE NO. 95,705

STATE OF FLORIDA,
Respondent.

DCA No.: 98-172

_____ /

BRIEF OF RESPONDENT ON JURISDICTION

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

BELLE B. SCHUMANN
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

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF CASE AND FACTS 1

CERTIFICATE OF TYPE SIZE AND STYLE 2

SUMMARY OF ARGUMENT 2

ARGUMENT 3

POINT OF LAW 3

THIS COURT HAS THE DISCRETION TO ACCEPT
JURISDICTION IN THE INSTANT CASE.

CONCLUSION 4

CERTIFICATE OF SERVICE 4

TABLE OF AUTHORITIES

CASES:

<u>Jollie v. State,</u> 405 So. 2d 418 (Fla. 1981)	3,4
<u>Maddox v. State,</u> 708 So. 2d 617 (Fla. 5th DCA), <u>rev. granted</u> , 718 So. 2d 169 (Fla. 1998)	1,3

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 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), 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.

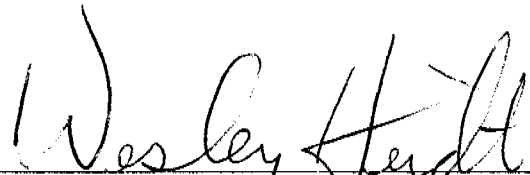
Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL



BELLE B. SCHUMANN
ASSISTANT ATTORNEY GENERAL
FLORIDA BAR #397024
FIFTH FLOOR
444 SEABREEZE BLVD.
DAYTONA BEACH, FL 32118
(904) 238-4990

COUNSEL FOR RESPONDENT



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

COUNSEL FOR RESPONDENT

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 Susan A. Fagan, counsel for the Petitioner, 112 Orange Ave. Ste A., Daytona Beach, FL 32114, this 21st day of June 1999.



BELLE B. SCHUMANN
ASSISTANT ATTORNEY GENERAL



WESLEY HEIDT
ASSISTANT ATTORNEY GENERAL