

**ORIGINAL**

**FILED**  
DEBBIE CAUSSEAU

IN THE SUPREME COURT OF FLORIDA

JUN 30 1999

MARK CHARLES,

CLERK, SUPREME COURT  
By BDK

Petitioner,

v.

CASE NO. 95,753  
5TH DCA CASE NO. 98-871

STATE OF FLORIDA,

Respondent.

---

ON NOTICE TO INVOKE DISCRETIONARY REVIEW  
OF A DECISION OF THE FIFTH DISTRICT COURT OF APPEAL

RESPONDENT'S BRIEF ON JURISDICTION

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CERTIFICATE OF TYPE SIZE AND STYLE

This brief is typed in 12 point Courier nonproportional space font.

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ARGUMENT -- RESTATED

WHETHER THE PER CURIAM AFFIRMANCE OF PETITIONER'S  
CONVICTIONS AND SENTENCES BY THE FIFTH DISTRICT  
COURT OF APPEAL IN THE CASE SUBJUDICE CITED AS  
CONTROLLING AUTHORITY A CASE CURRENTLY PENDING  
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Maddox v. State,  
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OTHER AUTHORITIES CITED

Article V, Section 3(b), Florida Constitution . . . . . 1,2

Florida Rule of Appellate Procedure 9.030(a)(2) . . . . . 1,2

### SUMMARY OF ARGUMENT

In Jollie v. State, 405 So. 2d 418 (Fla. 1981), this Court held that a District Court's *per curiam* opinion which cites as controlling authority a decision that is pending review in this Court would allow the Court to exercise its discretionary jurisdiction. Petitioner's convictions and sentences were affirmed *per curiam* by the Fifth District Court of Appeal citing as controlling authority Howard v. State, 705 So. 2d 947, 948 (Fla. 1st DCA 1998), a case not pending review before this Court. The *per curiam* affirmance did include a "see also" signal referencing Maddox v. State, 708 So. 2d 617 (Fla. 5th DCA 1998), which is presently under review by this Court. However, it was not cited as the lead case or controlling authority to allow this Court to exercise its discretionary jurisdiction pursuant to Jollie. Petitioner has presented no other valid basis for this Court to exercise its discretionary jurisdiction under Article V, Section 3(b) of the Florida Constitution and Florida Rule of Appellate Procedure 9.030(a)(2).

ARGUMENT -- RESTATED

THE OPINION OF THE FIFTH DISTRICT COURT OF APPEAL IN THE CASE SUBJUDICE AFFIRMING PETITIONER'S CONVICTIONS AND SENTENCES PER CURIAM DID NOT CITE AS CONTROLLING AUTHORITY A CASE CURRENTLY PENDING REVIEW IN THIS COURT TO ALLOW THE COURT TO EXERCISE ITS DISCRETIONARY JURISDICTION PURSUANT TO JOLLIE V. STATE, 405 SO. 2D 418 (FLA. 1981).

Under Article V, Section 3(b)(3) of the Florida Constitution and Florida Rule of Appellate Procedure 9.030(a)(2)(A)(iv), this Court may review any decision of a district court of appeal that expressly and directly conflicts with a decision of another district court of appeal or of the Supreme Court on the same question of law. In Jollie v. State, 405 So. 2d 418 (Fla. 1981), this Court held that a District Court's *per curiam* opinion which cites as controlling authority a decision that is pending review in this Court would allow the Court to exercise its discretionary jurisdiction. Petitioner's convictions and sentences were affirmed *per curiam* by the Fifth District Court of Appeal citing as controlling authority Howard v. State, 705 So. 2d 947, 948 (Fla. 1st DCA 1998), a case not pending review before this Court. The *per curiam* affirmance did include a "see also" signal referencing Maddox v. State, 708 So. 2d 617 (Fla. 5th DCA 1998), which is presently under review by this Court. In Jollie, this Court suggested such citation signals were appropriate to distinguish a reference to a lead case from counsel-advising cases. Petitioner's motion to stay issuance of mandate based upon the District Court's counsel notification citation to Maddox was denied. Maddox was not

cited by the District Court as the lead case or controlling authority for its *per curiam* affirmance of Petitioner's convictions and sentences and a mere reference to it was not intended to allow this Court to exercise its discretionary jurisdiction. Petitioner has not established conflict jurisdiction and he has not presented any other valid basis for this Court to exercise its discretionary jurisdiction.

CONCLUSION

Based on the arguments and authorities presented herein, Respondent would suggest that this Court should decline to exercise its discretionary jurisdiction in this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Respondent's Brief on Jurisdiction has been mailed to Rosemarie Farrell, Esquire, Office of the Public Defender, Counsel for Petitioner, 112 Orange Avenue, Suite A, Daytona Beach, Florida 32114, this 29<sup>th</sup> day of June, 1999.



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Anthony J. Golden  
Assistant Attorney General

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AB 11-13-98

L.C. 89-1-4086  
Golden mw

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA

FIFTH DISTRICT

JANUARY TERM 1999

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

MARK CHARLES,

Appellant,

v.

Case No. 98-871

L.C.T. 89-1910 CF-S2

STATE OF FLORIDA,

Appellee.

Opinion Filed April 30, 1999

Appeal from the Circuit Court  
for Putnam County,  
William Parsons, Judge.

James B. Gibson, Public Defender, and Rosemarie Farrell,  
Assistant Public Defender, Daytona Beach, for Appellant.

Robert A. Butterworth, Attorney General, Tallahassee,  
and Anthony J. Golden, Assistant Attorney General,  
Daytona Beach, for Appellee.

PER CURIAM.

AFFIRMED. *Howard v. State*, 705 So. 2d 947, 948 (Fla. 1st DCA 1998); *see also Maddox v. State*, 708 So. 2d 617 (Fla. 5th DCA 1998), *rev. granted*, Table No. 92,805 (Fla. Feb. 17, 1999).

GRIFFIN, C.J., COBB and PETERSON, JJ., concur.

DAYTONA BEACH, FLORIDA  
APPELLATE COURT

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