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IN THE SUPREME COURT OF FLORIDA

JUL 02 1999

CLERK, SUPREME COURT
By BAW

RONALD CARSON,

Petitioner,

v.

Case No. 95,765

STATE OF FLORIDA,

Respondent.

RESPONDENT'S JURISDICTIONAL BRIEF

On Review from the District Court of Appeal
of the State of Florida
Fifth District

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TABLE OF AUTHORITIES

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Reaves v. State,
485 So. 2d 829 (Fla. 1986) 2

OTHER AUTHORITIES:

Art. V, Fla. Const. 2

Art. V, §3(b), Fla. Const. 2

CERTIFICATE OF FONT

Undersigned counsel hereby certifies that the brief filed herein is produced in **COURIER NEW, 12 point.**

A handwritten signature in cursive script that reads "Rebecca Roark Wall". The signature is written in black ink and is positioned above a horizontal line.

Rebecca Roark Wall
Of Counsel

SUMMARY OF ARGUMENT

In the instant case, Petitioner is seeking review based on the District Court's *per curiam* decision with a cite to a case which is pending in this Court. However, the issue which Petitioner wants reviewed further has been raised in a **different** case which is pending in this Court -- a case which was **not** cited by the District Court in its appellate decision.

This Court must look to the four corners of the opinion to find express and direct conflict in order to properly exercise its discretionary jurisdiction. Here, the opinion does not include any reference to the case with which Petitioner seeks to "pair" in order to get further review of his sentence. Therefore, this court should not take jurisdiction in this case.

ARGUMENT

ISSUE PRESENTED

THIS COURT SHOULD NOT EXERCISE
DISCRETIONARY JURISDICTION IN THIS
CASE BECAUSE NO REASONS EXIST FOR
SUCH JURISDICTION.

This court's jurisdiction is defined by Article V of the Florida Constitution (1991). Article V, §3(b) expressly sets out this court's jurisdiction, describing every situation in which this court has or may take jurisdiction. Art. V, §3(b), Fla. Const. (1991). That jurisdiction is also set out in Fla.R.App.P. 9.030(a).

When determining whether to exercise discretionary jurisdiction, this court must look to the four corners of the opinions to find that conflict. *Reaves v. State*, 485 So. 2d 829 (Fla. 1986). It is well-established that "a district court of appeal per curiam opinion which cites as controlling authority a decision that is either pending in or has been reversed by this Court continues to constitute prima facie express conflict and allows this Court to exercise its jurisdiction." *Jollie v. State*, 405 So. 2d 418 at 420 (Fla. 1981).

In the instant case, Petitioner points to the District Court's *per curiam* decision as establishing jurisdiction because the decision included a citation to *Maddox v. State*, 708 So. 2d 617

(Fla. 5th DCA), *rev. granted*, 718 So. 2d 169 (Fla. 1998). As of this date, *Maddox* is still pending in this court.

However, Petitioner is asking this court to review his challenge to the constitutionality of the 1995 sentencing guidelines, and points to **another** case to seek jurisdiction on this issue. Petitioner is seeking jurisdiction pursuant to *Maddox*, but is actually asking this court to review a totally different issue -- the issue raised in *Heggs v. State*, 718 So. 2d 263 (Fla. 2d DCA), *rev. granted*, 720 So. 2d 518 (Fla. 1998).

Clearly, though, there is absolutely no reference to *Heggs* contained within the four corners of the District Court's decision. Nor is there any acknowledgment or recognition that there is any relevant issue pending in this Court. Without such reference, indicating that the District Court intended to "pair" the instant case with *Heggs* or any other case, this Court should not take jurisdiction.

This Court's decision in *Jollic* explains why it looks to the District Court's citations to find the need to take jurisdiction. This Court pointed out that when a District Court makes a specific reference to a pending case, and specifically "stat[es] that the mandate will be withheld pending final disposition of the petition for review, if any, filed in the controlling decision." *Id.* at 420. This is so that the relevant parties can seek consolidation if there is further review of the referenced case. *Id.*

But in the instant case, there was no statement by the District Court indicating that the mandate would be withheld so that the parties could seek consolidation with all of the other pending *Maddox* cases. Nor was there any reference whatsoever to *Heggs*. In short, there is no indication contained in the District Court's decision that there is any issue which would be effected by the pending *Heggs* case.

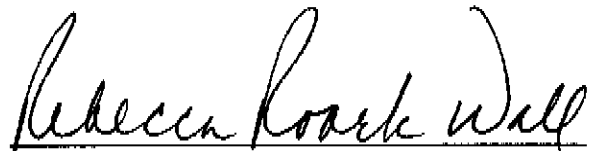
Therefore, while this court can take jurisdiction pursuant to *Jollie*, there is no reason for this court to take the instant case under the umbrella of *Maddox* when Petitioner is actually seeking review of a *Heggs* claim.

CONCLUSION

Based on the arguments and authorities presented herein, Respondent respectfully asks this honorable court to deny jurisdiction in this matter.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

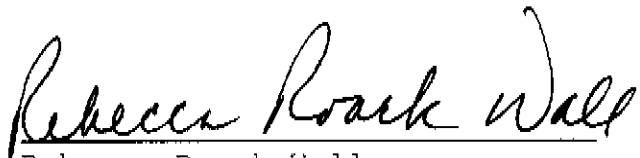


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Jurisdictional Brief of Respondent has been furnished by delivery to **Nancy Ryan**, Assistant Public Defender for Petitioner, this 30th day of June, 1999.



Rebecca Roark Wall
Of Counsel