

# ORIGINAL

IN THE SUPREME COURT OF FLORIDA

**FILED**  
DEBBIE CAUSSEAU

JUN 21 1999

CLERK, SUPREME COURT  
By DAW

MAURICE C. CARTER, )  
 )  
 Petitioner/Appellant, )  
 )  
 versus )  
 )  
 STATE OF FLORIDA, )  
 )  
 Respondent/Appellee. )  
 \_\_\_\_\_ )

S.C.T. CASE NO. 95,836  
DCA CASE NO. 98-3038

**ON DISCRETIONARY REVIEW FROM  
THE FIFTH DISTRICT COURT OF APPEAL**

JURISDICTIONAL BRIEF OF PETITIONER

JAMES B. GIBSON  
PUBLIC DEFENDER  
SEVENTH JUDICIAL CIRCUIT

LYLE HITCHENS  
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COUNSEL FOR PETITIONER/  
APPELLANT

TABLE OF CONTENTS

	<u>PAGE NO.</u>
TABLE OF CONTENTS	i
TABLE OF CITATIONS	ii
STATEMENT OF THE CASE AND FACTS	1
SUMMARY OF THE ARGUMENT	2
ARGUMENT	
THE DISTRICT COURT OF APPEAL'S DECISION CITES AS CONTROLLING AUTHORITY THE DECISION IN <u>SPEED VS. STATE</u> , WHICH IS PEND- ING REVIEW BY THIS HONORABLE COURT.	3
CONCLUSION	4
CERTIFICATE OF SERVICE	5

TABLE OF CITATIONS

CASES CITED:

PAGE NO.

Jollie v. State  
405 So. 2d 418 (Fla. 1981) 3

Speed v. State  
1999 WL 235192 (Florida 5th DCA 1999) 3

STATEMENT OF THE CASE AND FACTS

Petitioner was charged by an information filed in the Circuit Court of Orange County, Florida, with robbery (F2-L6).

Petitioner appealed and his conviction and sentence were affirmed by the Fifth District Court of Appeal on May 21, 1999. (APPENDIX). His notice of seeking this Honorable Court's review was filed on June 11, 1999.

SUMMARY OF THE ARGUMENT

The Fifth District Court of Appeal's decision in this cause cites as controlling authority a decision which is currently pending review in this Honorable Court in Supreme Court Case Number 95,706.

ARGUMENT

THE DISTRICT COURT OF APPEAL'S  
DECISION CITES AS CONTROLLING  
AUTHORITY THE DECISION IN  
SPEED VS. STATE, WHICH IS PEND-  
ING REVIEW BY THIS HONORABLE COURT.

In its per curiam decision affirming Petitioner's appeal, the Fifth District Court of Appeal wrote:

Speed v. State, 1999 WL 235192  
(Florida 5th DCA 1999). (APPENDIX)


See also Jollie v. State, 405 So. 2d 418 (Fla. 1981), wherein this Honorable Court held that a District Court of Appeal's per curiam opinion which cites as controlling authority a decision that is either pending review in or has been reversed by the Supreme Court constitutes prima facie conflict and allows the Supreme Court to exercise its jurisdiction.

CONCLUSION

BASED UPON the argument and authorities contained herein, Petitioner respectfully requests that this Honorable Court exercise its discretionary jurisdiction and grant review of the Fifth District Court of Appeal's decision in this cause.

Respectfully submitted,

JAMES B. GIBSON  
PUBLIC DEFENDER  
SEVENTH JUDICIAL CIRCUIT



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon the Honorable Robert E. Butterworth, Attorney General, 444 Seabreeze Boulevard, Fifth Floor, Daytona Beach, Florida 32118,

in his basket at the Fifth District Court of Appeal,  
and mailed to Maurice C. Carter, Inmate No. 329314,  
Avon Park Correctional Institution, Post Office Box  
1100, Avon Park, Florida 33825-1100, on this 18th day  
of June, 1999.



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LYLE HITCHENS  
ASSISTANT PUBLIC DEFENDER



IN THE SUPREME COURT OF FLORIDA

MAURIKCE C. CARTER, )  
 )  
 Petitioner/Appellant, )  
 )  
 vs. )  
 )  
 STATE OF FLORIDA, )  
 )  
 Respondent/Appellee. )  
 \_\_\_\_\_ )

S.CT. CASE NO. \_\_\_\_\_

DCA CASE NO. 98-3038

A P P E N D I X

✓ 98-3038 Lyle

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

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

MAURICE CHEVELLE CARTER,

Appellant,

v.

CASE NO. 98-3038 ✓

STATE OF FLORIDA,

Appellee.

Opinion filed May 21, 1999 ✓

RECEIVED

MAY 21 1999

Appeal from the Circuit  
Court for Orange County,  
Dorothy J. Russell, Judge.

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

James B. Gibson, Public Defender, and  
Lyle Hitchens, Assistant Public Defender,  
Daytona Beach, for Appellant.

Robert A. Butterworth, Attorney General,  
Tallahassee, and Mary G. Jolley,  
Assistant Attorney General,  
Daytona Beach, for Appellee.

PER CURIAM.

AFFIRMED.

*See Speed v. State*, 1999 WL 235192 (Fla. 5th DCA 1999).

COBB, HARRIS, and THOMPSON, JJ., concur.

IN THE SUPREME COURT OF FLORIDA

MAURICE C. CARTER, )  
 )  
 Petitioner/Appellant, )  
 )  
 versus ) S.CT. CASE NO. \_\_\_\_\_  
 )  
 STATE OF FLORIDA, ) DCA CASE NO. 98-3038  
 )  
 Respondent/Appellee. )  
 \_\_\_\_\_ )

CERTIFICATE OF FONT

I HEREBY CERTIFY that the size and style of the type used in this brief is 14 point Courier New, a font that is <sup>not</sup> proportionately spaced.

Respectfully submitted,

JAMES B. GIBSON  
PUBLIC DEFENDER  
SEVENTH JUDICIAL CIRCUIT



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