

ORIGINAL

FILED
DEBBIE CAUSSEAU

JUN 21 1999

IN THE SUPREME COURT OF FLORIDA

CLERK, SUPREME COURT
By *DBR*

WAHILL SALEH HACK,)
)
 Petitioner/Appellant,)
)
 versus)
)
 STATE OF FLORIDA,)
)
 Respondent/Appellee.)
 _____)

S.C.T. CASE NO. 95,837
DCA CASE NO. 98-3031

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

JURISDICTIONAL BRIEF OF PETITIONER

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

LYLE HITCHENS
ASSISTANT PUBLIC DEFENDER
Florida Bar No. 0147370
112 Orange Avenue, Suite A
Daytona Beach, Florida 32114
Phone: 904-252-3367

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 Wahill Hack, was charged by an amended Information in case number CR 98-5524 with (1) resisting officer with violence (F3-L5); (2) possession of cocaine (F3-L3); (3) possession of drug paraphernalia (M1); (4) resisting an officer without violence (M1); and (5) battery on a law enforcement officer (F3-L4). (Volume 2, pages 30-34) Appellant entered a plea of nolo contendere to Count II, possession of cocaine, Count IV, resisting officer without violence and Count V, battery on a law-enforcement officer. The prosecutor recommended 60 months as a prisoner releasee re-offender. (Volume 2, page 38)

Petitioner appealed and his convictions and sentences were affirmed by the Fifth District Court of Appeal on June 11, 1999. (APPENDIX). His original notice of seeking this Honorable Court's review was filed on June 11, 1999, and an amended notice of seeking this Honorable Court's review was filed on June 14, 1999.

SUMMARY OF 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)

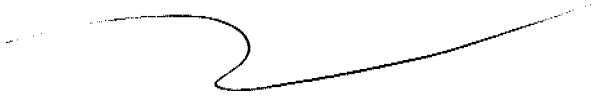
See also Jollie v. State, 405 So. 2d 418 (Fla.
1981), wherein this Honorable Court held that a
District Court of Appeal's per curiam opinion which
cites as controlling authority a decision that is
either pending review in or has been reversed by the
Supreme Court constitutes prima facie conflict and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



LYLE HITCHENS
ASSISTANT PUBLIC DEFENDER
Florida Bar No. 0147370
112 Orange Avenue, Suite A
Daytona Beach, Florida 32114
Phone: 904/252-3367

COUNSEL FOR PETITIONER/
APPELLANT

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 Wahill Saleh Hack, Inmate No. 929849,
Avon Park Correctional Institution - Work Camp, Post
Office Box 1100, Avon Park, Florida 33825-1100, on this
18th day of June, 1999.



LYLE HITCHENS
ASSISTANT PUBLIC DEFENDER

98-1053
LJP

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

JANUARY TERM 1999

WAHILL SALEH HACK,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

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

RECEIVED

Case No. 98-3031

JUN 11 1999

Opinion filed June 11, 1999

Appeal from the Circuit Court
for Orange County,
John H. Adams, Sr., Judge.

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

Robert A. Butterworth, Attorney General,
Tallahassee, and Kristen L. Davenport, Assistant
Attorney General, Daytona Beach, for Appellee.

PER CURIAM.

AFFIRMED. See Speed v. State, 24 Fla. L. Weekly D1017 (Fla. 5th DCA April 2,
1999).

COBB, HARRIS and THOMPSON, JJ., concur.

IN THE SUPREME COURT OF FLORIDA


WAHILL SALEH HACK,)
)
 Petitioner/Appellant,)
)
 versus) S.CT. CASE NO. _____
)
 STATE OF FLORIDA,) DCA CASE NO. 98-3031
)
 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/^{not}proportionately spaced.

Respectfully submitted,

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT



LYLE HITCHENS
ASSISTANT PUBLIC DEFENDER
Florida Bar No. 0147370
112 Orange Avenue, Suite A
Daytona Beach, Florida 32114
Phone: 904/252-3367
COUNSEL FOR PETITIONER/
APPELLANT