

IN THE SUPREME COURT OF FLORIDA

**FILED**  
DEBBIE CAUSSEAU

JUL 08 1999

CLERK, SUPREME COURT  
By

ANTONIO M. CLARK,  
Petitioner,

v.

CASE NO. 95,864

STATE OF FLORIDA,  
Respondent.

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ON DISCRETIONARY REVIEW FROM  
THE FIFTH DISTRICT COURT OF APPEAL

JURISDICTIONAL BRIEF OF RESPONDENT

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CERTIFICATE OF FONT AND TYPE SIZE

The undersigned counsel certifies that this brief was typed using 12 point Courier New, a font that is not proportionately spaced.

STATEMENT OF FACTS

Clark's conviction and sentence were affirmed without opinion by the Fifth District Court of Appeal. Clark v. State, 24 Fla. L. Wkly. D1290 (Fla. 5th DCA May 28, 1999). In so holding, the district court found this case to be controlled by the recent decision of its sister court in McKnight v State, 727 So. 2d 314 (Fla. 3d DCA 1999).

### SUMMARY OF ARGUMENT

In deciding this case, the district court relied on the recent opinion in McKnight v. State. A petition for review of McKnight is presently pending before this Court (case # 95,154). Should this Court grant review in McKnight, the Court would also have jurisdiction to review the instant case.

As a practical matter, however, it may be more prudent to hold this petition for review in abeyance until this same issue is resolved in other pending cases.

## ARGUMENT

THIS COURT SHOULD DECLINE TO ACCEPT  
JURISDICTION OF THIS CASE UNLESS IT  
ACCEPTS JURISDICTION IN MCKNIGHT.

This Court has jurisdiction under article V, section (3) (b) (3) of the Florida Constitution where a decision of a district court "expressly and directly conflicts" with a decision of this Court or another district court. Where the district court's decision is a per curiam opinion which cites as controlling law a decision that is either pending review in or has been reversed by this Court, this Court has the discretion to accept jurisdiction. Jollie v. State, 405 So. 2d 418, 420 (Fla. 1981).

Here, the district court found this case to be controlled by the recent decision of its sister court in McKnight v. State, 727 So. 2d 314 (Fla. 3d DCA 1999). A petition for review of McKnight is presently pending before this Court (case # 95,154). Should this Court grant review in McKnight, jurisdiction would be appropriate in this case as well.

However, if this Court declines to accept jurisdiction in McKnight, then it must decline jurisdiction here also, as the district court's limited per curiam affirmed opinion does not facially conflict with any other case.. See Harrison v. Hyster Co., 515 So. 2d 1279 (Fla. 1987).

Additionally, the State notes that this same issue -- the constitutionality of the Prison Releasee Reoffender Act -- is

presently pending review in numerous other cases in this Court. See, e.g., State v. Cotton, case # 94,996. Accordingly, the State submits that the interests of judicial economy, as well as fairness to this defendant, can best be served by holding this petition for review in abeyance pending resolution of this issue in the other cases. Numerous cases involving this issue will be ripe for review by this Court in the near future, and little purpose would be served by full briefing in all of them.

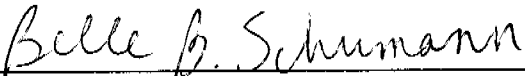



CONCLUSION

Based on the arguments and authorities presented herein, respondent respectfully requests this honorable Court decline to accept jurisdiction of this case unless it accepts jurisdiction in McKnight.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above Jurisdictional Brief has been furnished by hand delivery to Noel A. Pelella, Assistant Public Defender, 112 Orange Avenue, Suite A, Daytona Beach, Florida 32114, this 7<sup>th</sup> day of July, 1999.

  
\_\_\_\_\_  
Kristen L. Davenport  
Assistant Attorney General

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Petitioner,

v.

CASE NO. 95,864

STATE OF FLORIDA,

Respondent.

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RESPONDENT'S APPENDIX

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199-1-1942

A/B 3/23/99

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

M

ANTONIO M. CLARK,  
Appellant,

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

v.

CASE NO. 99-174

STATE OF FLORIDA,  
Appellee.

LCT # CR98-14385  
CR 98-14386

Opinion filed May 28, 1999

Appeal from the Circuit Court  
for Orange County,  
Cynthia Z. Mackinnon, Judge.

James B. Gibson, Public Defender,  
and Noel A. Pelella, 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 on the authority of McKnight v. State, 727 So. 2d 314 (Fla. 3d DCA 17,  
1999).

DAUKSCH, SHARP, W., and PETERSON, JJ., concur.

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