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IN THE SUPREME COURT OF FLORIDA

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JUL 06 1999

CLERK, SUPREME COURT

By _____

ANTHONY H. JERRY,)
)
 Petitioner,)
)
 vs.)
)
 STATE OF FLORIDA,)
)
 Respondent.)
 _____)

FSC CASE NO.

95,866

FIFTH DCA CASE NO. 97-2638

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

PETITIONER'S BRIEF ON JURISDICTION

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

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TABLE OF CONTENTS

	<u>PAGE NO.</u>
TABLE OF CONTENTS	i
CERTIFICATE OF FONT	i
TABLE OF CITATIONS	ii
STATEMENT OF THE CASE AND FACTS	1
SUMMARY OF ARGUMENT	5
ARGUMENT	6
<p>THIS COURT HAS JURISDICTION TO REVIEW THE INSTANT CASE PURSUANT TO <u>JOLLIE V. STATE</u>, 405 So. 2d 418 (Fla. 1981).</p>	
CONCLUSION	7
CERTIFICATE OF SERVICE	7

CERTIFICATE OF FONT

I HEREBY CERTIFY that the font used in this brief is 14 point proportionally spaced CG Times.


SUSAN A. FAGAN
ASSISTANT PUBLIC DEFENDER

TABLE OF CITATIONS

CASES CITED:

PAGE NO.

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

5, 6

Maddox v. State,
708 So. 2d 617 (Fla. 5th DCA 1998)

6

Jerry v. State,
24 Fla.L.Weekly D1290 (Fla. 5th DCA May 28, 1999)

2, 6

IN THE SUPREME COURT OF FLORIDA

ANTHONY H. JERRY,)	
)	
Petitioner,)	
)	
vs.)	FSC CASE NO.
)	
STATE OF FLORIDA,)	FIFTH DCA CASE NO. 97-2638
)	
Respondent.)	
_____)	

STATEMENT OF THE CASE AND FACTS

Petitioner's Statement of the Case and Facts are as follows:

The State Charged the Petitioner, Anthony Jerry, in an information, filed December 31, 1996, with delivery of cocaine and possession of cocaine. (R 15) Petitioner proceeded to jury trial on May 13, 1997, before Circuit Judge Michael Cycmanick. (T 1-170) At the close of the State's case-in-chief, which was the close of all the evidence, defense counsel made a motion for judgment of acquittal. (T 120-121)

The jury returned a guilty verdict as to each of the charged offenses. (T 165-166; R 28-29) The State filed a notice of its intention to seek habitual felony

offender sentencing on May 15, 1997. (R 33) Defense counsel filed a motion for a new trial on May 23, 197, which was denied by the trial court. (R 34-36) The Petitioner received a sentence of five (5) years imprisonment as a habitual felony offender for the delivery of cocaine offense. (R 54) As for the possession of cocaine offense, the Petitioner received a sentence of five years imprisonment as a habitual felony offender. (R 55)

Petitioner timely filed a notice of appeal on September 19, 1997. (R 61) The Office of the Public Defender was appointed to represent the Petitioner in this appeal on September 19, 1997. (R 61)

The Fifth District Court of Appeal affirmed the Petitioner's judgments and sentences in Jerry v. State, 24 Fla.L.Weekly D1290 (Fla. 5th DCA May 28, 1999). [Appendix A] Petitioner filed a notice to invoke this Court's discretionary jurisdiction on June 21, 1999.

Agent David Phelan testified that on December 5, 1996, he was walking undercover in the area of Forest City Road and Kennedy Boulevard. (T 73-74) He further testified that he approached the Petitioner at an Exxon station and asked the Petitioner about buying a "twenty." (R 75) According to Agent Phelan, the Petitioner responded that he had no drugs at the time, but he was headed towards Eatonville, and if Phelan wanted to follow him, he could give Phelan a

twenty there. (T 75) Phelan then told the Petitioner that he would meet him in Eatonville and proceeded to the area of Catherine Street and Hungerford Road. (T 75-76) Agent Phelan further testified that, approximately five minutes later, he next observed the Petitioner waving him down. (T 76) When Phelan turned around and pulled back up to the sidewalk, the Petitioner, according to Phelan, parked a burgundy or maroon color vehicle in the back of a house. (T 76)

Agent Phelan further testified that when he pulled up next to the Petitioner's vehicle, the Petitioner got out of his vehicle, walked over to Phelan's vehicle, asked Phelan what he wanted. (T 77) Phelan additionally testified that when he told the Petitioner that he wanted a twenty, the Petitioner stated "O.K." and walked down toward a group of five or six individuals standing in a driveway. (T 77)

After the Petitioner spoke with the individuals briefly, he returned to Phelan and handed him a piece of a substance that subsequently tested positive for crack cocaine in exchange for twenty dollars from Phelan. (T 77-78, 80) The Petitioner then walked back to his vehicle and left. (T 78)

Agent Dewana Mullins testified that he was monitoring the drug purchase. (T 100-101) According to Agent Mullins, she overheard Agent Phelan ask to purchase a twenty and a response by a second voice stating: "meet me down on

Catherine. I'll be down there in just a little bit." (T 101-102) The second voice was further overheard by Mullins directing Agent Phelan to the area of Catherine Street as well as Agent Phelan giving a description of the Petitioner. (T 102-103) The next thing Agent Mullins testified he overheard was the transaction being completed once the cocaine was purchased for twenty dollars. (T 103)

Deputy Silas Appleby testified that he was provided with a clothing and vehicle description over the police radio. (T 109) When Deputy Silas arrived at Catherine Street and turned the corner, he spotted the burgundy Honda matching the description he had received earlier and the Petitioner standing next to or close to the vehicle. (T 110, 113) Once Deputy Silas spoke to the Petitioner, he permitted the Petitioner to leave after completing a field investigation card. (T 110-111)

SUMMARY OF ARGUMENT

This Honorable Court has discretionary jurisdiction pursuant to Jolie v. State, 405 So. 2d 418 (Fla. 1981) to review the instant case where the Fifth District Court of Appeal cited in its opinion to a case which is currently pending review with this Court.

ARGUMENT


THIS COURT HAS JURISDICTION TO REVIEW THE INSTANT CASE PURSUANT TO JOLLIE V. STATE, 405 So. 2d 418 (Fla. 1981).

On appeal to the Fifth District Court of Appeal, Petitioner argued that the trial court erred by imposing a habitual felony offender sentence for the offense of possession of cocaine. On May 28, 1999, the Fifth District issued its opinion affirming Petitioner's sentences. See Jerry v. State, 24 Fla.L.Weekly D1290 (Fla. 5th DCA May 28, 1999) [See Appendix A] The District Court directly cited to the decision in Maddox v. State, 708 So. 2d 617 (Fla. 5th DCA 1998), which is currently pending for review with this Court in case number 92, 805, rev. granted, 718 So. 2d 169 (Fla. 1998). This Honorable Court has discretionary jurisdiction to accept the instant case pursuant to Jollie v. State, 405 So. 2d 418 (Fla. 1981).

CONCLUSION

Petitioner respectfully requests this Honorable Court to exercise its discretionary jurisdiction and accept the instant case for review.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been hand-delivered to the Honorable Robert A. Butterworth, Attorney General, 444 Seabreeze Boulevard, 5th Floor, Daytona Beach, FL 32118, via his basket at the Fifth District Court of Appeal and mailed to: Mr. Anthony H. Jerry, DC # 334857, F-1106L, Central Florida Reception Center - East, P.O. Box 628229, Orlando, Florida 32862-8229, this 1st day of July 1999.


SUSAN A. FAGAN
ASSISTANT PUBLIC DEFENDER