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## TABLE OF CITATIONS

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Woods v. State

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#### OTHER AUTHORITIES CITED:

Section 775.082(8), Florida Statutes. 3, 4

Article V, Section (3)(b)(3), The Florida Constitution 4

IN THE SUPREME COURT OF FLORIDA

DEREK MAXWELL, )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 STATE OF FLORIDA, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

CASE NO.

**STATEMENT OF CASE AND FACTS**

The State charged Derek Maxwell (petitioner) with robbery and filed pretrial notices of intent to seek an enhanced sentence as an habitual violent offender (HVO) and as a prison release reoffender (PRR). Petitioner moved to declare section 774.082(8), Florida Statutes, unconstitutional. After the trial court denied the motion petitioner pled nolo contendere and the State waived a violent career criminal sentence, but asked for a 15-year PRR sentence and a ten-year HVO sentence, concurrent. R. 41, 44, 45.

At the hearing on the motion petitioner argued that section 774.082(8) violates the separation of powers doctrine, the single subject requirement, and the

due process protection afforded by the state and federal constitutions. TR. 22-24.

The trial court denied the motion, found that petitioner qualified under the PRR statute, and sentenced him to incarceration for 15 years. TR. 30-37, R. 51.

Petitioner timely appealed.

The Fifth District Court of Appeal affirmed per curiam citing Speed v. State, 24 Fla. L. Weekly D 1017 (Fla. 5<sup>th</sup> DCA April 23, 1999), rev. pending, Case No. 95,706. The opinion in Speed cites with approval the decision in McKnight v. State, 727 So.2d 314 (Fla. 3d DCA 1999) and disagreement with the decision in State v. Cotton, 728 So.2d 251 (Fla. 2d DCA 1998). The Third District Court of Appeal certified conflict with Cotton in McKnight, and McKnight is pending for review by this court (Case No. 95,154). On June 16, 1999 the district court denied petitioner's motion for certification. Petitioner timely filed a notice to invoke this court's jurisdiction. See appendix to this brief.

## SUMMARY OF ARGUMENT

Where a per curiam decision of the district court cites as authority a case which is pending for review in this court, jurisdiction may be invoked. Jollie v. State, 405 So. 2d 418 (Fla. 1981). Petitioner seeks review of the decision of the Fifth District Court of Appeal upholding the constitutionality of section 775.082(8), Florida Statutes.

## ARGUMENT

### THIS COURT HAS JURISDICTION TO REVIEW THE DECISION OF THE FIFTH DISTRICT COURT OF APPEAL.

Petitioner was sentenced under section 775.082(8), Florida Statutes as a prison releasee reoffender. Petitioner challenged the constitutionality of the statute in both the trial court and the district court. The district court affirmed per curiam citing Speed v. State, 1999 WL 235192 (Fla. 5<sup>th</sup> DCA 1999), rev. pending, Case No. 95,706.<sup>1</sup> The opinion in Speed cites with approval the decision in McKnight v. State, 727 So.2d 314 (Fla. 3d DCA 1999), rev. pending, Case No. 95,154 and disagreement with the decision in State v. Cotton, 728 So.2d 251 (Fla. 2d DCA 1998). As noted by the Second District, the First District has noted apparent conflict with Cotton (Woods v. State, 24 Fla. L. Weekly D831 (Fla. 1<sup>st</sup> DCA Mar. 26, 1999) and the Fourth District has certified conflict with McKnight (State v. Wise, 24 Fla. L. Weekly D657 (Fla. 4<sup>th</sup> DCA Mar. 10, 1999). See Coleman v. State, 24 Fla. L. Weekly D1324 (Fla. 2d DCA June 4, 1999).

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<sup>1</sup>In its jurisdictional brief in Speed, the State acknowledges that this court has jurisdiction pursuant to Article V, Section (3)(b)(3) of the Florida Constitution where the decision of the district court expressly declared valid a state statute.

In Jollie v. State, 405 So. 2d 418 (Fla. 1981) this court stated that:

Common sense dictates that this Court must acknowledge its own public record actions in dispensing with cases before it. We thus conclude that a district court of appeal per curiam opinion which cites as controlling authority a decision that is either pending review in or has been reversed by this Court continues to constitute prima facie express conflict and allows this Court to exercise its jurisdiction.

Jollie at 420. This court may exercise jurisdiction to review the decision of the Fifth District Court of Appeal.



CONCLUSION

Based upon the authorities cited and the argument presented, petitioner is entitled to discretionary review of the decision of the Fifth District Court of Appeal.

Respectfully submitted,

JAMES B. GIBSON  
PUBLIC DEFENDER  
SEVENTH JUDICIAL CIRCUIT

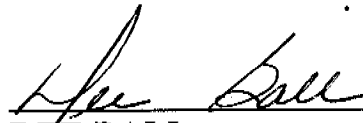
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COUNSEL FOR PETITIONER

**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. Derek Maxwell, #A114562, Central Florida Reception Center-East, P.O. Box 628229, Orlando, FL 32862-8229, this 19th day of July, 1999.

  
\_\_\_\_\_  
DEE BALL  
ASSISTANT PUBLIC DEFENDER

**CERTIFICATE OF FONT**

I hereby certify that the size and style of type used in this brief is point  
proportionally spaced CG Times, 14 pt.

A handwritten signature in cursive script, appearing to read "Dee Ball", is written over a horizontal line.

DEE BALL  
ASSISTANT PUBLIC DEFENDER

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

DEREK MAXWELL, )  
 )  
 Appellant/Petitioner, )  
 )  
 vs. )  
 )  
 STATE OF FLORIDA, )  
 )  
 Appellee/Respondent. )  
 \_\_\_\_\_ )

DCA Case No. 98-3072

Supreme Court Case No.

**NOTICE TO INVOKE DISCRETIONARY JURISDICTION**

NOTICE IS GIVEN, pursuant to Fla. R. App. P. 9.120(c), that Petitioner invokes the discretionary jurisdiction of the Supreme Court of Florida to review the decision of the Fifth District Court of Appeal in the above styled cause, dated May 21, 1999. Jurisdiction of the Florida Supreme Court is invoked pursuant to Jollie v. State, 405 So.2d 418 (Fla. 1981), (district court of appeal per curiam opinion which cites as controlling authority decision that is either pending review in or has been reversed by Supreme Court constitutes prima facie express conflict and allows Supreme Court to exercise its jurisdiction). The opinion of this court affirming the defendant's conviction and sentence in the instant case cites Speed v. State, 24 Fla. L. Weekly D1017 (Fla. 5<sup>th</sup> DCA April 23, 1999), rev. pending, Case No. 95,706 as controlling authority. The Third District Court certified conflict between McKnight v. State, 727 So.2d 314 (Fla. 3<sup>rd</sup> DCA 1999), rev. pending, Case No. 95,154 and State v. Cotton, 24 Fla. L. Weekly D18 (Fla. 2d DCA December 18, 1998).

Respectfully submitted,

JAMES B. GIBSON  
PUBLIC DEFENDER  
SEVENTH JUDICIAL CIRCUIT

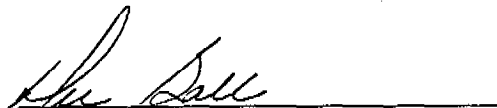


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COUNSEL FOR PETITIONER

**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 Blvd., Fifth Floor, Daytona Beach, FL 32118, via his basket at the Fifth District Court of Appeal and mailed to: Mr. Derek Maxwell, DC #A114562, Central Florida Reception Center, P.O. Box 628229, Orlando, FL 32862-8229, this 7th day of July, 1999.



DEE BALL  
ASSISTANT PUBLIC DEFENDER

98-1091  
DB

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.

DEREK MAXWELL,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

CASE NO. 98-3460

RECEIVED

MAY 21 1999

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

Opinion filed May 21, 1999

Appeal from the Circuit  
Court for Volusia County,  
Richard B. Orfinger, Judge.

James B. Gibson, Public Defender, and  
Dee Ball, 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*, 1999 WL 235192 (Fla. 5th DCA 1999).

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

98-1091  
DB

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

DEREK MAXWELL,  
Appellant,

v.

CASE NO. 98-3460

STATE OF FLORIDA,  
Appellee.

RECEIVED

JUN 16 1999

\_\_\_\_\_  
DATE: June 16, 1999

BY ORDER OF THE COURT:

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

ORDERED that Appellant's MOTION FOR CERTIFICATION,  
filed May 26, 1999, is denied.

I hereby certify that the foregoing is  
(a true copy of) the original Court order.

  
FRANK J. HABERSHAW, CLERK

cc: Office of the Public Defender, 7th JC  
Office of the Attorney General, Daytona Beach  
Derek Maxwell