

IN THE SUPREME COURT OF FLORIDA,

FILED
DEBBIE CAUSSEAU

SEP 24 1999

CLERK, SUPREME COURT
By _____

RICKY HOPE,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Case No. 96,352
4th DCA Case No. 98-2093

RESPONDENTS' BRIEF ON JURISDICTION

ROBERT BUTTERWORTH
ATTORNEY GENERAL
Tallahassee, Florida

DAVID M. SCHULTZ
Assistant Attorney General
Florida Bar No. 0874523
1655 Palm Beach Lakes Blvd
Suite 300
West Palm Beach, FL 33401
(561) 688-7759

Counsel for Respondent

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RULES OF PROCEDURE

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STATEMENT OF THE CASE AND FACTS

The State accepts petitioner's Statement of the Case and Facts to the extent that it represents an accurate non-argumentative recitation of the procedural history and facts of this case.

SUMMARY OF ARGUMENT

Petitioner seeks the discretionary review of this Court on the basis that the decision of the Fourth District Court of Appeal expressly and directly conflicts with a decision of the First District Court of Appeal in *Neal v. State*, 688 So. 2d 392 (Fla. 1st DCA 1997) on the same question of law. However, the pertinent question of law in this matter is whether a sentencing error must be preserved in the trial court to be raised on direct appeal. The pertinent question of law in *Neal* was whether errors in the assessment of costs and fees must be preserved in the trial court to be raised on direct appeal. These are not the same questions of law; therefore, the discretionary jurisdiction of this Court may not be sought pursuant to Fla. R. App. P. 9.030(a)(2)(A)(iv).

ARGUMENT

**THIS COURT SHOULD REFUSE
TO INVOKE ITS DISCRETIONARY JURISDICTION**

Petitioner seeks the discretionary review of this Court on the basis that the decision of the Fourth District Court of Appeal expressly and directly conflicts with a decision of another district court of appeal on the same question of law pursuant to Fla. R. App. P. 9.030(a)(2)(A)(iv). More specifically, however, petitioner argues that since the Fourth District Court of Appeal cited to *Hyden v. State*, 715 So. 2d 960 (Fla. 4th DCA 1998) in its decision, and since the *Hyden* opinion certified conflict with *Neal v. State*, 688 So. 2d 392 (Fla. 1st DCA 1997), the decision in this matter has certified conflict with *Neal*.

The decision in this matter cites to *Hyden* to support the court's decision to affirm the addition of thirty points to petitioner's scoresheet for a prior serious felony because petitioner failed to preserve this issue for appellate review. See *Hope v. State*, 24 Fla. L. Weekly D1655 (Fla. 4th DCA July 14, 1999). *Hyden* holds that in order for a sentencing error to be raised on direct appeal it must be preserved in the trial court either by objection at the time of sentencing or in a motion to correct sentence. *Hyden* at 961.

Another distinct issue in the *Hyden* opinion was whether errors in the assessment of costs and fees must also be preserved. *Id.*

The Fourth District Court of Appeal agreed with *Maddox v. State*, 708 So. 2d 616 (Fla. 5th DCA 1998), that errors in the assessment of costs and fees are also subject to the requirement of preservation. *Id.* In doing so, the Fourth District Court of Appeal receded from its prior decision, *Louisgeste v. State*, 706 So. 2d 29 (Fla. 4th DCA 1998), which held that an appellate court may consider the imposition of a public defender's fee without preservation of the issue in the trial court. *Id.* at 962. The Fourth District Court of Appeal noted in the *Hyden* opinion that its *Louisgeste* opinion had cited *Neal v. State*, 688 So. 2d 392 (Fla. 1st DCA 1997) to support the *Louisgeste* holding that errors in the assessment of costs and fees did not need to be preserved, *Id.* at 962; therefore, the Fourth District Court of Appeal certified conflict with the *Neal* opinion on this issue.

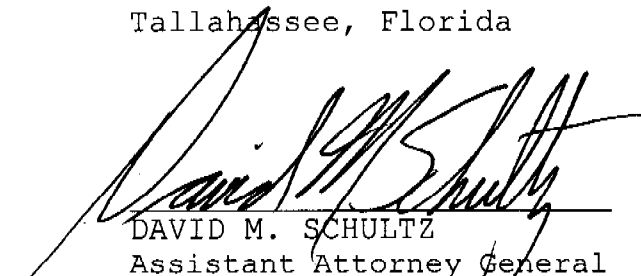
To review, the question of law in this matter relates to whether a sentencing error must be preserved in the trial court to be raised on direct appeal; the question of law raised in *Neal* is whether errors in the assessment of costs and fees must be preserved. Therefore, the decision in this matter does not conflict with the *Neal* decision on the same question of law.

CONCLUSION

Based on the above argument, respondent requests that this Honorable Court refuse to accept jurisdiction in this cause.

Respectfully submitted,

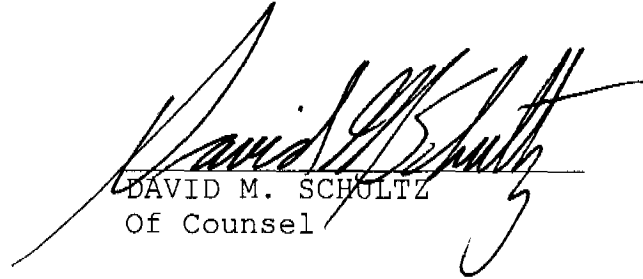
ROBERT BUTTERWORTH
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Assistant Attorney General
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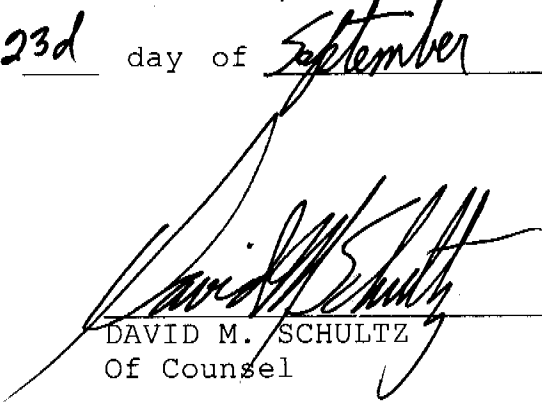
CERTIFICATE OF FONT

I HEREBY CERTIFY that this brief has been prepared in Courier
New font, 12 point, and double spaced.


DAVID M. SCHOLTZ
Of Counsel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been furnished by U.S. Mail to Ricky Hope, DC #901205, Washington Correctional Institute, 4455 Sam Mitchell Drive, Chipley, Florida this 23d day of September, 1999.



DAVID M. SCHULTZ
Of Counsel