

IN THE SUPREME COURT OF FLORIDA

FILED
DEBBIE CAUSSEAU

SEP 27 1999

WILLIE SANDERS,

Petitioner,

v.

CASE NO. 96,398

STATE OF FLORIDA,

Respondent.

CLERK, SUPREME COURT
By _____

ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

JURISDICTIONAL BRIEF OF RESPONDENT

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

KELLIE A. NIELAN
ASSISTANT ATTORNEY GENERAL
FLORIDA BAR #618550

KRISTEN L. DAVENPORT
ASSISTANT ATTORNEY GENERAL
Fla. Bar #909130
444 Seabreeze Blvd.
Fifth Floor
Daytona Beach, FL 32118
(904) 238-4990

COUNSEL FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
CERTIFICATE OF FONT AND TYPE SIZE	1
STATEMENT OF FACTS	2
SUMMARY OF ARGUMENT	3
ARGUMENT:	
THIS COURT DOES HAVE THE DISCRETION TO ACCEPT JURISDICTION OF THIS CASE.	4
CONCLUSION	5
CERTIFICATE OF SERVICE	6

TABLE OF AUTHORITIES

CASES:

Jollie v. State,
405 So. 2d 418 (Fla. 1981) 4

Sanders v. State,
737 So. 2d 589 (Fla. 5th DCA 1999) 2

Speed v State,
732 So. 2d 17 (Fla. 5th DCA),
rev. granted, case # 95,706 (Fla. Sept. 16, 1999) 2,4

OTHER:

Art. V, § (3) (b) (3), Fla. Const. 4

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

Sanders' conviction and sentence were affirmed without opinion by the Fifth District Court of Appeal. Sanders v. State, 737 So. 2d 589 (Fla. 5th DCA 1999). In so holding, the district court found this case to be controlled by its prior opinion in Speed v State, 732 So. 2d 17 (Fla. 5th DCA), rev. granted, case # 95,706 (Fla. Sept. 16, 1999).

SUMMARY OF ARGUMENT

This Court does have the discretion to accept jurisdiction of this 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 DOES HAVE THE DISCRETION
TO ACCEPT JURISDICTION OF THIS CASE.

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).

The State acknowledges that this Court has the authority to accept jurisdiction of this case in light of the district court's citation to Speed v State, 732 So. 2d 17 (Fla. 5th DCA), rev. granted, case # 95,706 (Fla. Sept. 16, 1999).

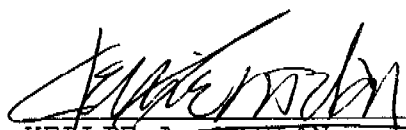
However, the State notes that this same issue -- the constitutionality of the Prison Releasee Reoffender Act -- is presently pending review in numerous other cases in this Court. See, e.g., State v. Cotton, case # 94,996. Accordingly, the State submits that the interests of judicial economy, as well 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.

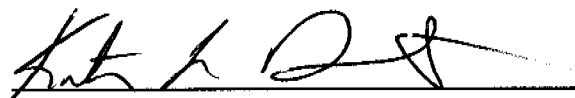
CONCLUSION

Based on the arguments and authorities presented herein, respondent respectfully acknowledges that this Court does have the discretion to accept jurisdiction of this case.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL


KELLIE A. NIELAN
ASSISTANT ATTORNEY GENERAL
Fla. Bar #618550


KRISTEN L. DAVENPORT
ASSISTANT ATTORNEY GENERAL
Fla. Bar #909130
444 Seabreeze Boulevard
Fifth Floor
Daytona Beach, FL 32118
(904) 238-4990

COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above Jurisdictional Brief has been furnished by hand delivery to Susan A. Fagan, Assistant Public Defender, 112 Orange Avenue, Suite A, Daytona Beach, Florida 32114, this 24th day of September, 1999.



Kristen L. Davenport
Assistant Attorney General

IN THE SUPREME COURT OF FLORIDA

WILLIE SANDERS,

Petitioner,

v.

CASE NO. 96,398

STATE OF FLORIDA,

Respondent.

ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

RESPONDENT'S APPENDIX

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

KELLIE A. NIELAN
ASSISTANT ATTORNEY GENERAL
FLORIDA BAR #618550

KRISTEN L. DAVENPORT
ASSISTANT ATTORNEY GENERAL
Fla. Bar #909130
444 Seabreeze Blvd.
Fifth Floor
Daytona Beach, FL 32118
(904) 238-4990

COUNSEL FOR RESPONDENT

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT
JANUARY TERM 1999

WILLIE SANDERS,

Appellant,

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

v.

Case No. 98-1523

L.C.T. 97-3833 CFA

STATE OF FLORIDA,

Appellee.

Opinion Filed June 25, 1999

Appeal from the Circuit Court
for Seminole County,
Newman D. Brock, Judge.

James B. Gibson, Public Defender, and
Susan A. Fagan, 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 McKnight v. State, 727 So. 2d 314 (Fla. 3d DCA 1999); see also
Speed v. State, 24 Fla. L. Weekly D1017 (Fla. 5th DCA April 23, 1999); Woods v. State,
24 Fla. L. Weekly D831 (Fla. 1st DCA March 26, 1999).

DAYTONA BEACH, FLORIDA
CLERK'S OFFICE

99 JUN 24 PM 5:45

RECEIVED

COBB, GOSHORN and ANTOON, JJ., concur.

Oh
4/25