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

FILED
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OCT 04 1999
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KENNETH TAYLOR,)
)
Appellant,)
)
vs.)
)
STATE OF FLORIDA,)
)
Appellee .)
_____)

CASE NO. 98-2215

S. CT. CASE NO. 7966

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

PETITIONER'S BRIEF ON JURISDICTION

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

~~JANE C. ALMY-LOEWINGER~~
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TABLE OF CITATIONS

CASES CITED:

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

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Maddox V. State, 708 So. 2d 617 (Fla. 5th DCA),
review granted, 718 So.2d 169 (Fla. 1998)
and 728 So. 2d 203 (Fla. 1999)

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SUMMARY OF ARGUMENT

The Fifth District Court of Appeal's decision in this cause cites as controlling authority a decision which is currently pending review in this Honorable Court in Supreme Court Case Number 92,805.

ARGUMENT

THE DISTRICT COURT OF APPEAL'S
DECISION CITES AS CONTROLLING
AUTHORITY THE DECISION IN MADDOX V.
STATE, 92,805, WHICH IS PENDING REVIEW
BY THIS HONORABLE COURT.


In its per curiam decision affirming Petitioner's conviction and sentence totaling 270 days in jail followed by four years and three months of probation, the Fifth District Court of Appeal wrote: per curiam AFFIRMED. See Maddox V. State, 708 So. 2d 617 (Fla. 5th DCA), review granted, 718 So.2d 169 (Fla. 1998) and 728 So. 2d 203 (Fla. 1999). Maddox v. State, is currently pending review by the Honorable Court in case number 92, 805. See Jollie v. State, 405 So.2d 418 (Fla. 198 1), wherein this Honorable Court held that a District Court of Appeal per curiam which cites as controlling authority a decision that is either pending review in or has been reversed by the Supreme Court constitutes prima facie conflict and allows the Supreme Court to exercise its jurisdiction.

CONCLUSION

For the reason expressed herein, Petitioner respectfully requests that this Honorable Court exercise its discretionary jurisdiction and grant review of the Fifth District **Court** of Appeal's decision in this cause.

Respectfully submitted,


JAMES B. GIBSON
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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, Florida 32118, via his basket at the Fifth District Court of Appeal and mailed to: Mr. Kenneth Taylor, 1759 Tomoka Farm Road, Daytona Beach, Florida 32124, on this ~~7th~~^{7th} day of October 1999.



JANE C. ALMY-LOEWINGER
ASSISTANT PUBLIC DEFENDER

CERTIFICATE OF FONT

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



JANE C. ALMY-LOEWINGER
ASSISTANT PUBLIC DEFENDER