

ORIGINAL

IN THE SUPREME COURT OF FLORIDA

FILED
DEBBIE CAUSSEAU
OCT 25 1999
CLERK, SUPREME COURT
BY

KENNETH TAYLOR,

Petitioner,

v.

CASE NO. 96,671

STATE OF FLORIDA,

Respondent.

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

WESLEY HEIDT
ASSISTANT ATTORNEY GENERAL
Fla. Bar #773026
444 Seabreeze Blvd.
Fifth Floor
Daytona Beach, FL 32118
(904) 238-4990

COUNSEL FOR RESPONDENT

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MISCELLANEOUS:

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STATEMENT OF FACTS

In addition to the facts offered by the Petitioner, the Respondent adds the following. The Petitioner pled nolo contendere to grand theft and was placed on two years probation. (R 1-7, 24, Vol. I). On August 11, 1998, the Petitioner was sentenced to jail time and additional probation time for failing to report, moving his place of residence, and admitting that he used crack cocaine'. (R 42-50, Vol. I). The total sentence imposed gave the Petitioner no credit for the time he had already served on probation. That is the issue appealed, and that was the issue the Fifth District found to be procedurally barred since it had never been presented to the lower court.

This was his second sentencing for violation of probation.

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.

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 Maddox v. State, 708 So. 2d 617 (Fla. 5th DCA), rev. granted, 718 So. 2d 169 (Fla. 1998).

However, the State notes that this same issue -- whether sentencing errors have to be preserved -- is presently pending review in numerous other cases in this Court. Accordingly, the State submits that the interests of judicial economy, as well as fairness to this Petitioner, 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

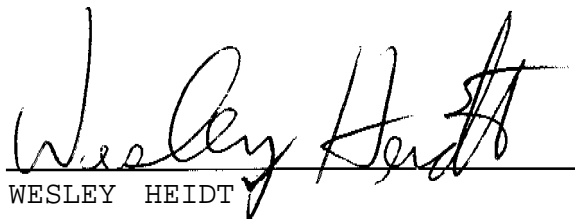
Based on the arguments and authorities presented herein, the Respondent respectfully acknowledges that this Court does have the discretion to accept jurisdiction of this case.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL



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



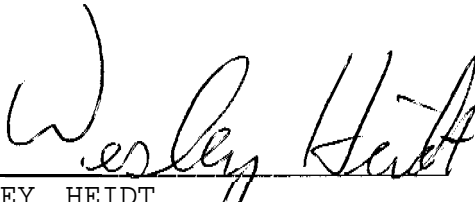
WESLEY HEIDT
ASSISTANT ATTORNEY GENERAL
FLORIDA BAR #773026
444 Seabreeze Boulevard
Fifth Floor
Daytona Beach, FL 32118
(904) 238-4990

COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above Merits Brief has been furnished by delivery via the basket of the Office of the Public Defender at the Fifth District Court of Appeal to Jane C. Almy-Loewinger, [✓]counsel for the Petitioner, 112 Orange Ave. Ste. A., Daytona Beach, FL 32114, this 21st day of October 1999.


KELLIE A. NIELAN
ASSISTANT ATTORNEY GENERAL


WESLEY HEIDT
ASSISTANT ATTORNEY GENERAL

IN THE SUPREME COURT OF FLORIDA

KENNETH TAYLOR,

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STATE OF FLORIDA,

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APPENDIX

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

WESLEY HEIDT
ASSISTANT ATTORNEY GENERAL
Fla. Bar #0773026
444 Seabreeze Blvd.
Fifth Floor
Daytona Beach, FL 32118
(904) 238-4990

COUNSEL FOR RESPONDENTS

PJ

98-0883
JAL

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

JULY TERM 1999

KENNETH TAYLOR,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

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

CASE NO. 98-2215

RECEIVED

SEP 03 1999

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

Opinion Filed September 3, 1999

Appeal from the Circuit Court
for Volusia County,
S. James Foxman, Judge.

James B. Gibson, Public Defender, and
Jane C. Almy-Loewinger, Assistant Public
Defender, Daytona Beach, for Appellant.

Robert A. Butterworth, Attorney General,
Tallahassee, and Maximillian J. Changus,
Assistant Attorney General, Daytona Beach,
for Appellee.

PER CURIAM.

AFFIRMED. *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).

SHARP, W., GOSHORN and GRIFFIN, JJ., concur.