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**THIS COURT SHOULD NOT ACCEPT JURISDICTION WHERE THE OPINION OF THE THIRD DISTRICT IN THIS CASE DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH THIS COURT’S DECISION IN MADDOX V. STATE, 25 Fla. L, Weekly S367, (FLA. MAY 11, 2000) OR WITH ANY OTHER OF THIS COURT’S PRIOR DECISIONS. (Restated).**

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## SUMMARY OF THE ARGUMENT

The Third District's opinion in the instant case is not in conflict with this Court's decision in Maddox v. State, 25 Fla. L. Weekly S367 (Fla. May 11, 2000), or with any other of this Court's decisions. This Court has consistently stated that a valid plea agreement constitutes clear and convincing grounds for the trial judge to impose a departure sentence. This Court in Maddox, made it clear that it had no intention from receding from its' previous cases which held that the failure to file written reasons for imposing a departure sentence pursuant to a negotiated plea agreement DOES NOT constitute reversible error. This Court should decline to exercise its discretionary jurisdiction.

## ARGUMENT

**THE OPINION OF THE THIRD DISTRICT IN THIS CASE DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH MADDOX V. STATE, 25 Fla. L, Weekly S 367, FLA., MAY 11, 2000 OR WITH ANY OTHER OF THIS COURT'S PRIOR DECISIONS. (Restated).**

In support of conflict jurisdiction, the Defendant argues that the Third District's opinion in this case expressly and directly conflicts with Court's decision in Maddox v. State, 25 Fla. L. Weekly S367 (Fla. May 11, 2000); Pope v. State, 561 So. 2d 554 (Fla. 1990), and Ree v. State, 565 So. 2d 1329 (Fla. 1990). As the State will show herein, the Third District's opinion is not in conflict with any of this Court's prior decisions and, thus, this Court should decline to accept jurisdiction in this matter.

In Maddox v. State, this Court distinguished between departure sentences involving those sentences which involved a negotiated plea. This Court specifically stated that a valid plea agreement constitutes clear and convincing grounds for the trial judge to impose a departure sentence, citing to this Court's earlier decision in State v. Williams, 667 So. 2d 191, 193-194 (Fla. 1996).

The State completely agrees that the instant case is controlled by this Court's decision in Maddox v. State. However, a review of this Court's decision

in Maddox reveals that it is not in direct and express conflict with the case at hand. In Maddox, as noted above, this Court distinguished between those cases in which the defendants agreed to the imposition of a departure sentence in a plea agreement and those cases in which the defendants, did not agree to the imposition of a departure sentence in a plea agreement. In Collins v. State, 25 Fla. L. Weekly S500 (Fla. June 22, 2000), this Court specifically stated as follows with regard to its' earlier ruling in Maddox:

“We stated in Maddox that we did not intend to recede from our previous cases holding that the failure to file written reasons for imposing a departure sentence pursuant to a negotiated plea agreement does not constitute reversible error. See Maddox, 25 Fla. L. Weekly S367, S372 (citing State v. Williams, 667 So. 2d 191, 193-194 (Fla. 1996).”

25 Fla. L. Weekly S 500, footnote #2.

This Court in Collins held that its' earlier decision in State v. Williams, supra, was inapposite since Collins did not agree to the imposition of a departure sentence in a negotiated plea. This Court should reach a similar conclusion in this case. The defendant's appeal did not fit into the narrow class of unpreserved sentencing errors which can be raised on direct appeal as fundamental error as defined by this Court's decision in Maddox v. State. The failure to file written reasons for departure is thus NOT fundamental error where the defendant agreed

to the imposition of the departure sentence in the plea agreement.

The defendant further argues that it doesn't matter that the claim regarding the trial court's failure to file written reasons for its departure was not preserved since this Court explicitly disagreed with that holding when it disapproved in Maddox, a similar holding by the First District in Butler v. State, 723 So. 2d 865 (Fla. 1st DCA 1998). A review of the decision in Butler, however reveals that the defendant in that case did not enter into any plea agreement in which he agreed to the imposition of the departure sentence. As such, the decision in Butler is entirely distinguishable.


The Third District's decision is also not in conflict with either Pope v. State, *supra*, or Ree v. State, *supra*. While it is true that commencing with Pope v. State, this Court has consistently mandated that noncompliance with the sentencing statutes and rules governing departure sentences should be addressed on direct appeal, even absent a contemporaneous objection in the departure context, this Court distinguishes between those departure sentences which are based on a negotiated plea from those cases in which the defendants didn't agree to the imposition of a departure sentence in a plea agreement. See Maddox v. State, 25 Fla. L. Weekly at S372.

**CONCLUSION**

Based upon the authorities and arguments cited herein, this Court should decline to exercise its discretionary jurisdiction.

Respectfully Submitted,

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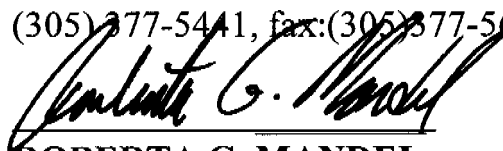
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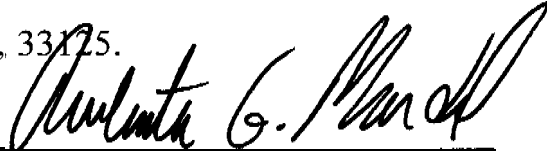
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief of Respondent was mailed this 20<sup>th</sup> day of July, 2000, to ROBERT GODFREY, Assistant Public Defender, Public Defender, Eleventh Judicial Circuit of Florida, 1320 N.W. 14th Street, Miami, Florida, 33125.



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