IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,	)	
	)	
Petitioner/Appellee,	)	
	)	
v.	)	CASE NO. SCOO-163
	)	DCA CASE No. 4DC99-0789
JAMES ROY MELTON, JR.,	)	
	)	
Respondent/Appellant.	)	

RESPONDENT'S ANSWER BRIEF ON DISCRETIONARY JURISDICTION

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PRELIMINARY STATEMENT

Respondent, Mr. James Roy Melton, Jr., was the Defendant, and Petitioner, the State of Florida, was the Prosecution in the Criminal Division of the Circuit Court of the 19th Judicial Circuit, In and For Martin County, Florida.

In the brief, the parties will be referred to as they appear before this Honorable Court.

The symbol "R" will denote Record on Appeal

The symbol "T" will denote jury trial.

In an identical case, State v. Adams, Supreme Court Case No. SCOO-18, Petitioner has sought the discretionary jurisdiction of this Court. This Court's decision on jurisdiction is pending.

CERTIFICATE OF TYPE SIZE AND STYLE

In accordance with the Florida Supreme Court Administrative Order, issued on July 13, 1998, and modeled after Rule 28-2(d), Rules of the United States Court of Appeals for the Eleventh Circuit, counsel for Respondent, Mr. James Roy Melton, Jr., hereby certifies that the instant brief has been prepared with **12** point Courier New type, a font that is not spaced proportionately.

STATEMENT OF THE CASE AND FACTS

Respondent, Mr. James Roy Melton, Jr., accepts Petitioner's Statement of the Case and Facts as found in Petitioner's brief on jurisdiction with the following addition:

The trial court judge's pronouncement of sentence, in pertinent part, follows:

> I do find that the Defendant is a prison releasee reoffender under Section 775.082(8) and is accordingly sentenced as such to fifteen years in the Department of Corrections to serve one hundred percent of that sentence. But that does not end the proceedings here, Mr. Melton. Section 775.082(8)(c) permits the Court to impose a greater sentence...I will sentence him, as well as a habitual felony offender to thirty years in the Department of Corrections. Therefore, the total active of sentence is thirty years in the Department of Corrections as a habitual felony offender. And of that, fifteen years is as a prison releasee reoffender.

(T 255-256).

SUMMARY OF ARGUMENT

This Honorable Court does not have authority pursuant to Article V, Section 3(b) (3) of the Florida Constitution to review this decision of the Fourth District Court of Appeal because the decision does not expressly and directly conflict with a decision of another District Court of Appeal on the same question of law.

ARGUMENT

THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH THE DECISION OF ANOTHER DISTRICT COURT OF APPEAL.

This Honorable Court has authority pursuant to Article V, Section 3(b)(3) of the Florida Constitution (1980) to review a decision of a district court of appeal that expressly and directly conflicts with a decision of another district court of appeal or the Supreme Court on the same question of law. See The Florida Star v. B.J.F., 530 So. 2d 286, 288 (Fla. 1988). This Court in Mancini v. State, 312 So. 2d 732, 733 (Fla. 1975), made clear that its "jurisdiction to review decisions of courts of appeal because of alleged conflicts is invoked by (1) the announcement of a rule of law which conflicts with a rule previously announced by this court or another district, or (2) the application of a rule of law to produce a different result in a case which involves substantially the same facts as a prior case. In this second situation, the facts of the case are of the utmost importance." [Emphasis Added].

Respondent, Mr. Melton, Jr., was sentenced to fifteen years (15) years in prison as a prison releasee reoffender and thirty (30) years as a habitual felony offender. This was the same

sentence imposed in Adams v. State, 1999 WL 966743 (Fla. 4th DCA October 20, 1999). Relying on Adams, the fourth district reversed Mr. Meltons's sentence. In Adams, the fourth district wrote:

> The court then sentenced appellant [respondent] to a total of thirty years. The judge specified that the first fifteen years would be served as a PRR. Under the prison releasee reoffender statute, the maximum term for the offense committed by appellant is fifteen years. See § 775.082(8)(a)2.c. The last fifteen years were to be served as an HFO, for which he would receive full credit for time served. The Prison Releasee Reoffender Act does not allow any type of early release, including gain time. See § 775.082(8)(b). In contrast, a defendant sentenced as a habitual felony offender is eligible for early release after completing at least 85% of his sentence. See §§ 775.084(4)(j); 944.275(4)(b).

Adams, 1999 WL 966743. Thus, the imposition of the PRR sentence along with the habitual felony offender sentence increased the greater sentence. Additionally, because Respondent (and Mr. Adams) were sentenced to the maximum habitual felony offender sentence permitted by law, the additional PRR sentence increased their sentences beyond that permitted by law.

The case cited by Respondent in support of their request for conflict jurisdiction, Grant v. State, 745 So.2d 519 (Fla. 2d DCA 1999), is factually distinguishable from the instant case. Respondent received a thirty (30) year habitual felony offender

sentence and a concurrent fifteen (15) **year** Prison Releasee Reoffender sentence. In contrast, Mr. Grant **was** sentenced to a concurrent term of 15 years in prison as a habitual felony offender and 15 years as a Prison Releasee Reoffender. The Second District explained:

> Lastly, Grant argues that his sentence violates double jeopardy because it consists of two separate sentences as a prison releasee reoffender and as a habitual felony offender for a single offense. However, the final judgment and sentence clearly reflects that Grant received one sentence **of fifteen years as a habitual felony offender with a minimum mandatory term of fifteen years as a prison releasee reoffender.** Minimum mandatory sentences are proper as long as they run concurrently. See Jackson v. State, 659 So.2d 1060, 1061-62 (Fla.1995). Moreover, Moreland v. State, cited by Grant, is distinguishable because in that case the defendant actually received two alternative sentences. See 590 so. 2d 1020, 1021 (Fla. 2d DCA 1991) (defendant was sentenced to life in prison with a twenty-five year minimum mandatory as a habitual offender or to life under the guidelines, whichever **was** less). **Because the minimum mandatory sentence runs concurrently to the habitual felony offender sentence, there is no error.**

Id. [Emphasis Added]. In Grant, unlike in Respondent's **case,** the concurrent sentences of the same length did not serve to increase the greater or maximum sentence. Therefore, Respondent's case and Grant are factually different and do not expressly and directly

conflict,

This Honorable Court does has authority pursuant to Article V, Section 3(b)(3) of the Florida Constitution (1980) to review a decision of a district court of appeal that expressly declares valid a state statute. Fla. R. App. P. 9.030(a)(2)(A)(i). See also Libertarian Party of Florida v. Smith, 687 So. 2d 1292 (Fla. 1996). However, the Fourth District in the instant case did not expressly declared valid any Florida statute. Further, the Fourth District did not expressly construe our State constitution or the United States Constitution in their decision. See Fla R. App. P. 9.030(a)(2)(A)(ii).

Therefore, this Honorable Court has does not have jurisdiction over the instant cause on this alternative basis advanced by Petitioner-State and should decline to review this cause on the merits.

CONCLUSION

Based on the foregoing arguments and the authorities cited therein, Respondent respectfully requests this Honorable Court to deny Petitioner's request for discretionary review over the instant cause.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the Petitioner's Brief on Discretionary Jurisdiction has been furnished to Jeanine M. Germanowicz, Assistant Attorney General, Third Floor, 1655 Palm Beach Lakes Blvd., West Palm Beach, Florida, 33401-2299 by courier this 4th day of February, 2000.

Attorney for Respondent