

ORIGINAL

IN THE SUPREME COURT OF FLORIDA

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CLERK, SUPREME COURT

BY DJ

CHARLES EDWARDS,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

CASE NO. SC00-443

JURISDICTIONAL BRIEF OF RESPONDENT

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PRELIMINARY STATEMENT

Respondent State of Florida was the appellee in the district court of appeal and will be referred to as the state. Petitioner Edwards was the appellant below and will be referred to as petitioner or by proper name.

CERTIFICATION OF TYPE AND FONT

This brief was prepared using New Courier type 12 font.

STATEMENT OF THE CASE AND FACTS

The state accepts petitioner's statement of the case and facts.

SUMMARY OF ARGUMENT

The state agrees that there is discretionary jurisdiction to review this per curiam affirmed citation decision to Collins v. State, 732 So.2d 1149 (Fla. 1st DCA 1999), review granted, 744 So.2d 453 (Fla. 15 November 1999). However, in the interest of judicial economy and in conforming to the Florida Constitution as interpreted by Jollie, further proceedings should be stayed and the case remanded to the district court pending resolution of Collins.

ARGUMENT

ISSUE

IS THERE DISCRETIONARY JURISDICTION TO REVIEW THE DECISION BELOW ON THE AUTHORITY OF JOLLIE V. STATE, 405 SO.2D 418 (FLA. 1981) BECAUSE IT RELIES ON A CASE NOW UNDER REVIEW IN THIS COURT, COLLINS V. STATE, 732 SO.2D 1149 (FLA. 1ST DCA 1999), REVIEW GRANTED, 744 SO.2D 453 (FLA. 15 NOV. 1999)? (Restated)

In Jollie, this Court interpreted the then newly adopted amendments to article V, section 3(b)(3) of the Florida Constitution which had significantly restricted the discretionary authority of this Court to review decisions of the district courts. This Court concluded that decisions of the district courts which cite as controlling authorities cases which are either under review in this Court or which have been previously reversed by this Court constitute direct and express conflict which "**allows this Court to exercise its discretion.**" The state agrees entirely with Jollie, **all** of Jollie. The decision below meets this criteria and the state agrees with the petitioner that there is discretionary authority which **allows** this Court to exercise its discretionary jurisdiction.

Although petitioner is correct in relying on Jollie for discretionary authority, petitioner failed to read the remainder of Jollie where this Court instructed the parties and the district courts on the correct procedures to be followed when direct and express conflict arises on the basis of a per curiam affirmed citation to a case under review in this Court¹. First, the district court itself should have withheld its mandate pending resolution of Collins v. State, which the district court held was controlling. Second, in the absence of a **sua sponte** withholding of the mandate,

¹It is difficult to see how a district court could, as a practical matter, rely on a controlling authority from this Court which held contrary to the decision of the district court. In the unlikely event this should occur, the obvious solution for the losing party is to petition for rehearing in the district court pointing out the direct and express conflict and that it is not the prerogative of a district court to contradict decisions of this Court. Hoffman v. Jones, 280 So.2d 1 (Fla. 1973).

petitioner should have moved for a stay of the mandate pending resolution of Collins. If petitioner wishes to rely on a portion of Jollie, petitioner is obligated to follow other companion holdings of Jollie which are designed to achieve judicial economy and to prevent discretionary jurisdiction on one issue of becoming a device for flaunting the jurisdictional provisions of the Florida Constitution. As the Court is certainly aware, discretionary jurisdiction on one issue has become a standard ploy of parties seeking unrestricted review of district court decisions on points of law which are either not addressed by the district court or which do not furnish a constitutional basis for review. See, as examples of innumerable other instances where a valid jurisdictional issue is used to argue numerous other unrelated issues for which no independent jurisdiction exists, Williams v. State, SC00-78; Wheaton v. State, 97,137; and Merritt v. State, 96,763.

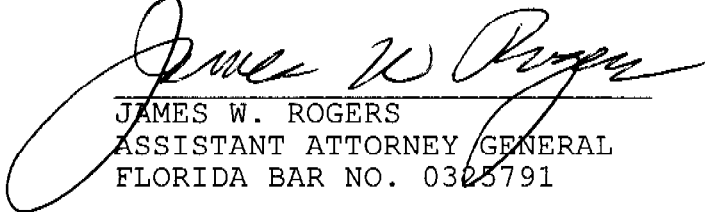
In summary, the state agrees there is constitutional authority which allows this Court to review the decision below. However, pursuant to Jollie, the state urges the Court to exercise that jurisdiction by immediately remanding this case to the district court with instructions to withdraw the mandate and to withhold final decision until this Court issues its Collins decision.

CONCLUSION

There is constitutional authority allowing this Court to exercise discretionary jurisdiction but that jurisdiction should be exercised by remanding to the district court as discussed above.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL



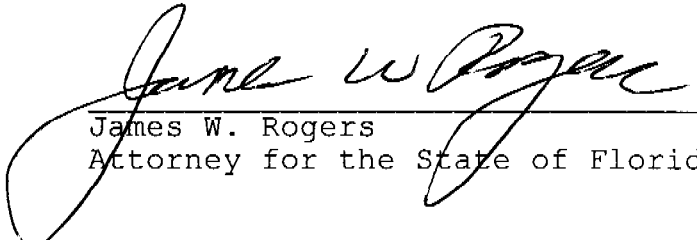
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing JURISDICTIONAL BRIEF OF RESPONDENT has been furnished by U.S. Mail to Kathleen Stover, Assistant Public Defender, Leon County Courthouse, Suite 401, 301 South Monroe Street, Tallahassee, Florida 32301, this 12th day of April, 2000.



James W. Rogers
Attorney for the State of Florida

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