

ORIGINAL

IN THE SUPREME COURT OF FLORIDA

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VASHON O. LEWIS,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Case No. SC00-686

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 No. 618550

ANGELA D. McCRAVY
Assistant **Attorney General**
Florida Bar No. 983391
444 Seabreeze Boulevard
Suite 500
Daytona Beach, FL 32118
(904) 238-4990

COUNSEL FOR RESPONDENT

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STATEMENT REGARDING TYPE

The size and style of type used in this brief is 12-point Courier New, a font that is not proportionately spaced.

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OTHER AUTHORITIES:

Article V **§3(b)(3)**, Florida Constitution 4

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STATEMENT OF THE CASE AND FACTS

Petitioner's statement of the case and facts is substantially accurate for the purpose of this appeal.

SUMMARY OF THE ARGUMENT

This Court has jurisdiction to review the decision of the Fifth District Court of Appeal in this case on either one of two different bases: 1) the decision of the Fifth District cites as controlling authority decisions which are currently pending review in this Court; and 2) the decision of the Fifth District expressly and directly conflicts with decisions of other district courts of appeal on the same question of law.

ARGUMENT

THIS COURT HAS JURISDICTION TO REVIEW THE DECISION OF THE FIFTH DISTRICT COURT OF APPEAL ON EITHER ONE OF TWO EASES.

A. The decision cites as controlling authority two cases which are currently pending review in this Court:

In its opinion affirming Petitioner's sentence as a Prison Releasee Reoffender, the Fifth District Court of Appeal relied upon Richardson v. State, 748 So. 2d 1042 (Fla. 5th DCA 1999) and Gray v. State, 742 So. 2d 805 (Fla. 5th DCA 1999). Both of these cases are currently pending review by this Court, and the merits briefing has been completed in both cases. See Richardson v. State, Case No. SC96764, and Gray v. State, Case No. SC96765. This Court has not yet rendered a decision in either Richardson or Gray.

The supreme court may review a citation PCA if the controlling precedent is pending review by the Court. Walker v. State, 682 So. 2d 555 (Fla. 1996); Jollie v. State 405 So. 2d 418 (Fla. 1981), on remand, 407 So. 2d 1000 (Fla. 5th DCA 1981). The phrase "pending review" means that the Court must have accepted the citation PCA for review. The mere fact that the citation PCA is pending on a notice to invoke discretionary jurisdiction, not yet acted on by the supreme court, does not give rise to jurisdiction. Harrison v. Hyster Co., 515 So. 2d 1279 (Fla. 1987).

In the instant case, this Court has accepted both Richardson

and Gray for review. Therefore the Fifth District's reliance upon those two cases as controlling authority in its opinion in the instant case provides this Court with jurisdiction. See also D.F. v. State, 647 So. 2d 829 (Fla. 1994) (Florida Supreme Court has jurisdiction to review decision which expressly relied upon a case pending review in that Court). Accord, A.A. v. State, 646 So. 2d 194 (Fla. 1994); N.H. v. State, 646 So. 2d 195 (Fla. 1994); Petit v. State, 646 So. 2d 196 (Fla. 1994); S.S. v. State, 646 So. 2d 197 (Fla. 1994); R.W. v. State, 646 So. 2d 198 (Fla. 1994).

B. The decision of the Fifth District expressly and directly conflicts with decisions of other district courts of appeal on the same question of law:

Respondent seeks review of the Fifth District's decision in the instant case in order to resolve the conflict created between that decision and the following decisions of the First and Second Districts: Brinson v. State, 25 Fla. L. Weekly D698 (Fla. 2d DCA March 15, 2000); Grant v. State, 745 So. 2d 519 (Fla. 2d DCA 1999); and Smith v. State, 25 Fla. L. Weekly D684 (Fla. 1st DCA March 13, 2000).

Article V §3(b) (3) of the Florida Constitution and Florida Rule of Appellate Procedure 9.030 (a) (2) (A) (iv) provide that this Court has jurisdiction to review a decision of a district court of appeal which announces a rule of law which expressly and directly conflicts with a decision of another district court of

appeal on the same question of law. Jurisdiction founded on "express and direct conflict" does not require that the district court certify or even directly recognize the conflict. The 'express and direct" requirement is met if it can be shown that the holding of the district court is in conflict with another district court. See Hardee v. State, 534 So. 2d 706 (Fla. 1988); Ford Motor Co. v. Kikis, 401 So. 2d 1341 (Fla. 1981) (District court's discussion of the legal principles which the court applied supplies a sufficient basis for a petition for conflict review), on remand, 405 So. 2d 1061 (Fla. 5th DCA 1981). Respondent asserts that the decision rendered by the Fifth District in the instant case expressly and directly conflicts with decisions of the First and Second Districts.

In the instant **case**, the Fifth District found that a habitual violent felony offender split sentence of ten years incarceration followed by ten years probation with a concurrent fifteen-year minimum mandatory term as a Prison Releasee Reoffender (hereinafter PRR) constituted **two** separate sentences for the same crime. However in Smith, the First District held that a habitual felony offender (hereinafter HFO) sentence with a concurrent minimum mandatory term under the PRR Act "does not create two separate sentences for one crime." Similarly, the Second District held in Grant that an HFO sentence with a PRR minimum mandatory term is proper as long as the minimum mandatory

terms run concurrently. Most recently, in Brinson the Second District reiterated that a sentence imposed under both the PRR Act and the HFO statute does not violate double jeopardy principles and has certified conflict with the Fourth District on this issue.

As the Fifth District's decision in the instant case announces a rule of law which conflicts with two other districts, this Court has and should exercise its conflict jurisdiction to review this case.

Important policy reasons dictate that this Court should accept jurisdiction. To interpret the Prison Release Reoffender Act as the Fifth District has in the instant case would abrogate the intent of the legislature in enacting the statute. This interpretation of the Act has already created conflict among the districts. Therefore it is imperative that this Court exercise its discretionary jurisdiction to review the constitutionality of the PRR statute and its interplay with the HFO statute as interpreted by the Fifth District Court of Appeal in the instant case.

CONCLUSION

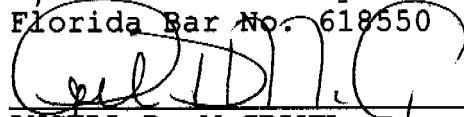
Based on the arguments and authorities presented herein, Respondent respectfully requests that this Court accept jurisdiction in this case.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL



KELLIE A. NIELAN
Assistant Attorney General
Florida Bar No. 618350



ANGELA D. McCRAVY
Assistant Attorney General
Florida Bar No. 983391
444 Seabreeze Boulevard
Suite 500
Daytona Beach, FL 32118
(904) 238-4990

COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Brynn Newton, Assistant Public Defender, 112-A Orange Avenue, Daytona Beach, FL 32114-4310 on this 14th day of April, 2000.



COUNSEL FOR RESPONDENT