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**FILED**  
THOMAS D. HALL  
MAR 05 2001  
CLERK, SUPREME COURT  
BY \_\_\_\_\_

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA, :  
 :  
 Petitioner, :  
 :  
 vs. :  
 :  
 KELLEN LEE BETZ, :  
 :  
 Respondent. :  
 :  
 \_\_\_\_\_ :

Case No. SC01-319

DISCRETIONARY REVIEW OF DECISION OF THE  
DISTRICT COURT OF APPEAL OF FLORIDA  
SECOND DISTRICT

BRIEF OF RESPONDENT ON JURISDICTION

JAMES MARION MOORMAN  
PUBLIC DEFENDER  
TENTH JUDICIAL CIRCUIT

✓ ROBERT D. ROSEN  
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ATTORNEYS FOR RESPONDENT

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STATEMENT OF THE CASE AND FACTS

The Respondent accepts the Petitioner's Statement of the Case and Facts as accurate.

SUMMARY OF THE ARGUMENT

The case relied upon by the Petitioner has been effectively overruled by the U.S. Supreme Court.

## ARGUMENT

### ISSUE

THE SECOND DISTRICT COURT OF APPEAL'S DECISION IN BETZ V. STATE, 26 FLA. L. WEEKLY D304 (FLA. 2D DCA JANUARY 24, 2001) DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH THE FIFTH DISTRICT COURT OF APPEAL (as restated by Respondent).

The state claims the Second District's decision in Betz conflicts with the Fifth District's decision in State v. Jarrett, 530 So. 2d 1089 (Fla. 5th DCA 1988). The Second District addressed this issue in its opinion. As noted by that court, Jarrett was decided prior to the United States Supreme Court case of California v. Acevado, 500 U.S. 565 (1991). See Betz, 26 Fla. L. Weekly at 305 n.1. The Second District relied in part on the Acevado holding which reached a conclusion opposite that of the Jarrett case. Since Acevado effectively overruled Jarrett, the Jarrett case is no longer good law and cannot be the basis for a finding of express and direct conflict with Betz. The Respondent believes this Court should not grant jurisdiction in the instant case.

CONCLUSION

In light of the Second District Court's opinion and the Acevado case, the Respondent respectfully asks this Honorable Court to deny jurisdiction in the instant case.

CERTIFICATE OF SERVICE ✓

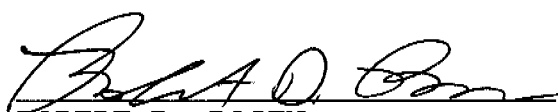
I certify that a copy has been mailed to Richard M. Fishkin, Suite 700, 2002 N. Lois Ave., Tampa, FL 33607, (813) 873-4739, on this 23<sup>rd</sup> day of February, 2001.

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Respectfully submitted,

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