

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC03-2104

THE STATE OF FLORIDA,

Petitioner,

-vs-

ELDRICK WENDALL WOODING,

Respondent.

ON PETITION FOR DISCRETIONARY REVIEW

BRIEF OF RESPONDENT ON JURISDICTION

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INTRODUCTION

The State of Florida, the petitioner, was the prosecution in the trial court and the appellant in the District Court. Eldrick Wendall Wooding, the respondent, was the defendant in the trial court and the appellee in the District Court of Appeal. The decision of the District Court of Appeal, Third District, is in the appendix to this brief filed pursuant to Florida Rules of Appellate Procedure 9.120 and 9.220.

STATEMENT OF THE CASE AND FACTS

The state's statement of case and facts is accurate.

SUMMARY OF ARGUMENT

This Court has the discretion to grant review in this case, but should not do so at this time pending its decision in the lead case, *State v. Espindola*, SC03-2103.

ARGUMENT

THIS COURT HAS DISCRETION TO EXERCISE REVIEW, BUT SHOULD NOT DO SO AT THIS TIME.

The state is correct that this Court has the discretion to accept jurisdiction in this case because it is based on *Espindola v. State*, 855 So. 2d 1281 (Fla. 3d DCA 2003), which is pending review in this Court as *State v. Espindola*, SC03-2103. *See, e.g., Walker v. State*, 682 So. 2d 555 (Fla. 1996).

Rather than grant discretionary review at this juncture, however, this Court should stay any decision on jurisdiction pending this Court's opinion in *Espindola*. Only were this Court to reverse the Third District Court of Appeal in *Espindola* would this Court need to grant jurisdiction. To grant discretionary review at this time would merely ensure an unnecessary "copy cat" opinion reiterating this Court's decision in the lead case, *Espindola*.

CONCLUSION

This Court should not exercise its discretion to grant review in this case until the resolution of *Espindola v. State*, SC03-2103.

Respectfully submitted,

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CERTIFICATES

I HEREBY CERTIFY that a true and correct copy of the foregoing brief and accompanying appendix was delivered by courier to Richard L. Polin, Assistant Attorney General, 444 Brickell Avenue, Suite 950, Miami, Florida 33131, this 12th day of February 2004.

I HEREBY CERTIFY that this brief and accompanying appendix are printed in 14-point Times New Roman font.

JOHN EDDY MORRISON

Assistant Public Defender

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_____ /

APPENDIX

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