

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v.

Case No.

ALEX RICARDO REEVES,

Respondent.

ON PETITION FOR REVIEW FROM  
THE SECOND DISTRICT COURT OF APPEAL  
STATE OF FLORIDA

**JURISDICTIONAL BRIEF OF PETITIONER**

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**STATEMENT OF THE CASE AND FACTS**

Respondent was charged with kidnapping, aggravated battery, and aggravated assault on August 4, 2000 (V 1 R 11-12), and was convicted of attempted kidnapping and aggravated battery (V 1 R 40-41). He had been notified prior to trial that the State would be seeking an enhanced penalty pursuant to Section 775.084, Florida Statutes (V 1 R 9-10), and he was given concurrent sentences of 30 years in prison as an habitual felony offender, pursuant to Section 775.084(4)(a), with a 15-year minimum mandatory sentence as a three-time violent felony offender, pursuant to Section 775.084(4)(c) (V 1 R 79-85). Respondent subsequently filed a motion to correct his sentence (SR 2 146-147) on the ground that the requirement of a 15-year minimum mandatory sentence had been added to the statute by Chapter 99-188, Laws of Florida, which the Second District Court of Appeal had held unconstitutional in *Taylor v. State*, 818 So. 2d 544 (Fla. 2d DCA), *review dismissed*, 821 So. 2d 302 (Fla. 2002).

The opinion of the Second District Court of Appeal, *Reeves v. State*, 28 Fla. L. Weekly D1120 (Fla. 2d DCA May 9, 2003), a copy of which is appended to Petitioner's Brief on Jurisdiction, outlines the remaining underlying relevant facts at this stage of the proceedings. The State timely filed a motion for certification of conflict, asking the Second District to certify conflict with the Third, Fourth, and Fifth Districts, but that mo-

tion was denied.

**SUMMARY OF THE ARGUMENT**

The opinion below relies on *Taylor v. State*, 818 So. 2d 544 (Fla. 2d DCA), *review dismissed*, 821 So. 2d 302 (Fla. 2002), which held that Chapter 99-188, Laws of Florida, was unconstitutional as violative of the single subject rule, for reversal of Respondent's sentences. However, the opinion below also recognizes with a "but see" *State v. Franklin*, 836 So. 2d 1112 (Fla. 3d DCA 2003), presently pending before this Court in case no. SC03-413, which held that Chapter 99-188 did not violate the single subject rule. The State therefore submits that the opinion below expressly and directly conflicts with a decision of another district court of appeal on the same question of law and that this Court should therefore grant review in this case.

## ARGUMENT

CONFLICT EXISTS BETWEEN THE INSTANT DECISION AND A DECISION OF THIS COURT OR OTHER DISTRICT COURTS ON THE ISSUE OF THE 15-YEAR MINIMUM MANDATORY PRISON SENTENCE REQUIRED FOR THREE-TIME VIOLENT FELONY OFFENDERS BY THE AMENDMENT MADE TO SECTION 775.084, FLORIDA STATUTES (2000), BY CHAPTER 99-188, LAWS OF FLORIDA, IS UNCONSTITUTIONAL.

In *Taylor v. State*, 818 So. 2d 544 (Fla. 2d DCA), review dismissed, 821 So. 2d 302 (Fla. 2002), the Second District held that Chapter 99-188, Laws of Florida, was unconstitutional as violative of the single subject rule. In the opinion below, the Second District relied in part on its *Taylor* opinion for its conclusion that Respondent's sentences were illegal, and it referenced *State v. Franklin*, 836 So. 2d 1112 (Fla. 3d DCA 2003), which held that Chapter 99-188 did not violate the single subject rule and which is presently pending before this Court in case no. SC03-413, with a "but see."

The other case that the Second District relied on to reverse Respondent's sentences was *Green v. State*, 839 So. 2d 748 (Fla. 2d DCA 2003), which held that Chapters 2002-208 - 2002-212, Laws of Florida, may not be retroactively applied, yet the Second District failed to mention in its opinion below several opinions that the *Green* opinion had either certified conflict with or at least acknowledged possible conflict with, to wit: *Carlson v. State*, 27 Fla. L. Weekly D2162 (Fla. 5th DCA Oct. 4, 2002), and *Hersey v. State*, 831 So. 2d 679 (Fla. 5th DCA 2002)

(certified conflict), and *Nieves v. State*, 833 So. 2d 190 (Fla. 4th DCA 2002), and *Green v. State*, 832 So. 2d 199 (Fla. 4th DCA 2002), both of which were per curiam affirmances relying on the Fifth District's holding in *Hersey* (with both of which the *Green* opinion stated in footnote 8 that it might also be in conflict).

In any event, given that *Franklin* explicitly states that it is in direct conflict with *Taylor* and that the opinion below relies on the *Taylor* holding and recognizes *Franklin* with a "but see," the State submits that the opinion below expressly and directly conflicts with a decision of another district court of appeal on the same question of law. Therefore, in order to maintain consistency with the myriad of other cases pending before this Court on this issue, this Court should grant review in this case.

**CONCLUSION**

Petitioner respectfully requests that this Honorable Court grant review of the instant case on the ground that the opinion below expressly and directly conflicts with a decision of another district court of appeal on the same question of law.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to William L. Sharwell, Assistant Public Defender, P.O. Box 9000–Drawer PD, Bartow, Florida 33831-9000, this 9th day of June, 2003.

**CERTIFICATE OF FONT COMPLIANCE**

I HEREBY CERTIFY that the size and style of type used in this brief is 12-point Courier New, in compliance with Fla. R. App. P. 9.210(a)(2).

Respectfully submitted,

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