

IN THE SUPREME COURT OF FLORIDA

ANDREW MANOS,

Petitioner,

v.

CASE NO. SC05-586

STATE OF FLORIDA,

Respondent.

ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

JURISDICTIONAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE AND FACTS

The District Court entered a "citation" PCA ruling citing to a case currently pending review in this Court. This Court has stayed proceedings in said case already under review until disposition of another case involving the same issue.

SUMMARY OF ARGUMENT

The Court does have the discretion to accept jurisdiction of this case. As a practical matter, however, it may be more prudent to hold this petition for review in abeyance until this same issue is resolved in other pending cases.

ARGUMENT

THIS COURT DOES HAVE THE
DISCRETION TO ACCEPT JURISDICTION
OF THIS CASE.

This Court has jurisdiction under Article V, Section (3)(b)(3) of the Florida Constitution where a decision of a district court "expressly and directly conflicts" with a decision of this Court or another district court. Where the district court's decision is a *per curiam* opinion which cites as controlling law a decision that is either pending review in or has been reversed by this Court, this Court has the discretion to accept jurisdiction. Jollie v. State, 405 So. 2d 418, 420 (Fla. 1981).

The State acknowledges that this Court has the authority to accept jurisdiction of this case in light of the district court's citation to Franklin v. State, 877 So.2d 19 (Fla. 4th DCA 2004) (pending review in Case No. SC04-1523 - proceedings stayed pending disposition of State v. Iseley, Case No. SC04-485). Therefore, this same issue -- whether a lesser included offense is determined by the potential maximum penalty rather than by the degree of the crime -- is presently pending review in other cases in this Court. Specifically, this Court has stayed proceedings in Franklin v. State, until disposition of State v. Iseley. Accordingly, the State submits that the interests of judicial economy, as well as fairness to this defendant, can best be served by holding this petition for review in abeyance pending resolution of this issue in State v.

Iseley. This is a repetitive issue which will affect numerous cases and little purpose would be served by full briefing in all of them.

CONCLUSION

Based on the arguments and authorities presented herein, Respondent respectfully acknowledges that this Court does have the discretion to accept jurisdiction of this case.

SIGNATURE OF ATTORNEY AND CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to:
Christopher S. Quarles, Assistant Public Defender, 112 Orange
Avenue, Suite A, Daytona Beach, Florida 32114, via the Public
Defender's Box at the Fifth District Court of Appeal on April
____, 2005.

Respectfully submitted,
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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the font
requirements of Fla. R. App. P. 9.210.

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