

IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. SC05\_\_\_\_\_

**STATE OF FLORIDA,**

Petitioner,

vs.

**OWRAN GREEN,**

Respondent.

PETITIONER'S BRIEF ON JURISDICTION

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PRELIMINARY STATEMENT

Petitioner was the prosecution and Respondent was the Defendant in the Criminal Division of the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida. Petitioner was the Appellee and Respondent was the Appellant in the Fourth District Court of Appeal. In this brief, the parties shall be referred to as they appear before this Honorable Court except that Petitioner may also be referred to as the State.

The symbol "A" will be used to denote the appendix attached hereto.

All emphasis in this brief is supplied by Petitioner unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

The only relevant facts to a determination of this Court's discretionary jurisdiction under Article V, Section 3(b)(3) of the Florida Constitution are those set forth in the appellate opinion sought to be reviewed. A copy of the opinion is contained in the appendix to this brief.

SUMMARY OF THE ARGUMENT

This Court should accept jurisdiction to review the instant case because the opinion of the Fourth District Court of Appeal conflicts with decisions from other district courts of appeal.

ARGUMENT

POINT I

THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL EXPRESSLY AND DIRECTLY CONFLICTS WITH DECISIONS OF OTHER DISTRICT COURTS OF APPEAL.

It is well settled that in order to establish conflict jurisdiction, the decision sought to be reviewed must expressly and directly create conflict with a decision of another District Court of Appeal or of the Supreme Court on the same question of law. Art. V, Sect. 3(b)(3) Fla. Const.; Jenkins v. State, 385 So.2d 1356 (Fla. 1980).

The State submits that this Court has jurisdiction. In Green v. State, 2005 WL 156724 (Fla. 4<sup>th</sup> DCA Jan. 26, 2004), the Fourth District stated:

Some decisions since Peart have held that nothing less than the initiation of a deportation proceeding will constitute sufficient prejudice by reason of a "threat of deportation." See Kindelan v. State, 786 So.2d 599 (Fla. 3d DCA 2001) (holding that the denial of a request to adjust immigration status and a finding that movant was excludable is not a "threat of deportation"); Curiel v. State, 795 So.2d 180 (Fla. 3d DCA 2001) (placing a detainer on the incarcerated movant was not a "threat of deportation"); Saldana v. State, 786 So.2d 643 (Fla. 3d DCA 2001) (finding that notice a detainer would be placed on the movant and an investigation into deportability initiated was not a threat of "actual deportation"). We disagree with that reading and are therefore in conflict

with these decisions on this issue.

Based on the above, it is clear there is conflict between the Fourth and Third Districts<sup>1</sup>.

The Fourth District's opinion also states:

We add that at the evidentiary hearing defendant will have to offer evidence that the present conviction made him eligible for deportation. He will necessarily also have to show precisely when he learned of the threat of deportation as required by Peart. Defendant had only a two-year window to file for relief under rule 3.172(c)(8). Peart held that the two-year time limit begins on "the day a defendant gains (or should gain) knowledge of the threat." 756 So. 2d at 46. It is not clear to us when defendant claims he actually learned of the threat of deportation, so his proof will have to make that date evident (emphasis supplied).

This portion of the Fourth District's opinion conflicts with the Second District which found a motion legally insufficient when the defendant failed to allege that he was within the two year window for filing such a claim. See Alexis v. State, 845 So. 2d 262, 262 (Fla. 2d DCA 2003)(affirming denial of motion for post-conviction relief because defendant did not allege in

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<sup>1</sup> Petitioner realizes it is unnecessary to file a juris brief if a district court certifies conflict. However, the Fourth District did not officially certify conflict. This Court has sometimes requested juris briefs when a district court acknowledged conflict, but did not formally certify conflict. See e.g., the court file in State v. David White, Case no. SC60-83289. Furthermore, Petitioner is claiming conflict in addition to the ground on which the Fourth District acknowledged conflict.



his motion when he had notice of the threat of deportation).

Based on the foregoing, Petitioner submits that the Fourth District's decision in the instant case conflicts with Kindelan, Curiel, Saldana, and Alexis.

CONCLUSION

WHEREFORE, based on the foregoing arguments and the authorities cited therein, Respondent respectfully requests this Court GRANT Petitioner's request for discretionary review over the instant cause.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing "Respondent's Brief on Jurisdiction" has been furnished to: Michael B. Cohen, Pinnacle Corporate Park, 500 West Cypress Creek Rd. #300, Fort Lauderdale, FL 33309, this \_\_\_\_ day of April, 2005.

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James J. Carney

CERTIFICATE OF TYPE SIZE AND STYLE

In accordance with Fla. R. App. P. 9.210, the undersigned hereby certifies that the instant brief has been prepared with 12 point Courier New Type.

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James J. Carney