

IN THE SUPREME COURT OF FLORIDA

DAVID BROWN,)	
)	
Petitioner,)	
)	
vs.)	CASE NO. SC06-2333
)	DCA CASE NO. 4D05-424
STATE OF FLORIDA,)	
)	
Respondent.)	
_____)	

PETITIONER’S BRIEF ON DISCRETIONARY JURISDICTION

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PRELIMINARY STATEMENT

Petitioner, David Brown, was the Defendant and Respondent, State of Florida, was the Prosecution in the Criminal Division of the Circuit Court of the Seventeenth Judicial Circuit, In and For Broward County, Florida.

In this brief, the parties will be referred to as they appear before this Honorable Court.

The symbol "A" will denote the appendix.

STATEMENT OF THE CASE AND FACTS

At the violation of probation hearing, defense counsel asked that the trial court refer to the actual probation paperwork, but instead the trial court took judicial notice of an Inmate Release Detail Information, which was introduced to prove Petitioner's probationary status.

Petitioner maintained that the computer print out was improperly admitted into evidence, because the Inmate Release Detail Information was not authenticated. The Department of Corrections web site states, "The Florida Department of Corrections updates this information regularly, to ensure that it is complete and accurate, however this information can change quickly. Therefore, the information on this site may not reflect the true current location, status, release date, or other information regarding the offender." Petitioner cited to *Gray v. State*, 910 So.2d 867 (Fla. 1st DCA 2005) for the proposition that the computer printout is inadmissible hearsay, absent testimony from the appropriate records custodian.

On direct appeal to the Fourth District Court of Appeal, the sentence was *per curiam* affirmed on October 18, 2006, with a citation to *Yisrael v. State*, 938 So. 2d 546 (Fla. 4th DCA 2006). *Brown v. State*, 940 So. 2d 500 (Fla. 4th DCA 2006). (A-1). On October 18, 2006, Petitioner filed in the Fourth District Court of Appeal his motion for rehearing. On November 16, 2006, the Fourth District Court of Appeal denied rehearing. On November 20, 2006, Petitioner filed the notice to invoke discretionary review.

Unlike *Yisrael*, Petitioner was not sentenced as a Prison Releasee Reoffender. The

Inmate Release Detail Information was not used to prove a release date. And, furthermore, the motion to correct sentence related to the scoresheet error and credit for time served, not to release date.

SUMMARY OF THE ARGUMENT

Petitioner respectfully submits that this Honorable Court has discretionary jurisdiction to review the instant cause.

The Fourth District Court of Appeal affirmed Petitioner's conviction and sentence on the authority of a case pending review before this Court, *Yisrael v. State*, 938 So. 2d 546 (Fla. 4th DCA 2006) (SC06-2211). Hence, discretionary jurisdiction is provided pursuant to *Jollie v. State*, 405 So. 2d 418 (Fla. 1981).

ARGUMENT

**THIS COURT HAS AUTHORITY TO REVIEW A
DECISION OF A DISTRICT COURT OF APPEAL
THAT AFFIRMS A SENTENCE BASED UPON A CASE
THAT IS PENDING BEFORE THIS COURT ON
CERTIFICATION OF CONFLICT WITH A DECISION
OF ANOTHER DISTRICT COURT OF APPEAL.**

This Court has jurisdiction to review a decision which affirm *per curiam* a judgment and sentence with citation to an opinion that is pending review in this Court. Art. V, § 3(b)(4), *Fla. Const.*; *International Paper Co. v. Florida Dept. of Revenue*, 913 So. 2d 541 (Fla. 2005); *Jollie v. State*, 405 So. 2d 418 (Fla. 1981).

Here, the Fourth District Court of Appeal *per curiam* affirmed with citation to *Yisrael v. State*, 938 So.2d 546 (Fla. 4th DCA 2006). (A 1). In *Yisrael*, the Fourth District held a letter from the Department of Corrections was admissible at sentencing to establish a defendant 's release date from prison, as a public record pursuant to Section 90.803 (8) *Florida Statute* (2005) exception to the hearsay rule, and certified conflict with *Gray v. State*, 910 So.2d 867 (Fla. 1st DCA 2005). *Yisrael* is pending review in this Court. See, Case No. SC06-2211.

Given that the *per curiam* affirmance relies upon *Yisrael* and *Yisrael* is pending review in this Court based upon a certified conflict, this Court should exercise its discretion to review the decision at bar.

CONCLUSION

Based on the foregoing arguments and the authorities cited therein, Petitioner requests that this exercise its discretion to accept review of this cause.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of Petitioner's Brief On Discretionary Jurisdiction has been furnished to: James J. Carney, Assistant Attorney General, Office of the Attorney General, Ninth Floor, 1515 North Flagler Drive, West Palm Beach, Florida 33401-3432, by courier this _____ day of December, 2006.

Attorney for David Brown

CERTIFICATE OF FONT SIZE

I HEREBY CERTIFY this Jurisdictional Brief has been prepared with 14 point Times New Roman type, in compliance with *Fla. R. App. P.* 9.210(a)(2), this ____ day of December, 2006.

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