

IN THE SUPREME COURT OF FLORIDA

ALEXANDER PERKINS,	)	
	)	
Petitioner/Appellant,	)	
	)	
v.	)	CASE NO.
	)	DCA CASE NO. 4D05-712
STATE OF FLORIDA,	)	
	)	
Respondent/Appellee.	)	
_____	)	

**PETITIONER-S BRIEF ON DISCRETIONARY JURISDICTION**

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**ARGUMENT**

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## **PRELIMINARY STATEMENT**

Petitioner, Alexander Perkins, was the Defendant and Respondent, State of Florida, was the Prosecution in the Criminal Division of the Circuit Court of the Fifteenth Judicial Circuit, In and For Palm Beach 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**

Petitioner was sentenced as a prison releasee reoffender to a mandatory sentence of life imprisonment. To prove release date from prison, the prosecution relied upon an affidavit from an employee of the Department of Corrections admitted over defense objection. On direct appeal as in the Court below, Petitioner maintained that the affidavit was hearsay not within an exception and its admission violated the confrontation clause of the Six and Fourteenth Amendments to the United States Constitution. Absent the improperly admitted affidavit, the state did not establish that Petitioner was a prison releasee reoffender. On September 27, 2006, the Fourth District Court of Appeal affirmed admission of the affidavit and the prison releasee reoffender sentence on the authority of Yisrael v. State, 938 So.2d 546 (Fla. 4th DCA 2006). Perkins v. State, 31 Fla. L. Weekly D2443 (Fla. 4<sup>th</sup> DCA Sept. 27, 2006) (A-1). On November 8, 2006, Petitioner's motion for rehearing was denied. On November 20, 2006, Petitioner filed in the Fourth District Court of Appeal his notice to invoke discretionary review. This brief on jurisdiction follows.

## **SUMMARY OF ARGUMENT**

This Court has constitutional authority to review the instant case because the Fourth District Court of Appeal affirmed Petitioner's sentence citing as authority a decision which is presently pending review in this Court based upon a certified conflict with an opinion from another district court of appeal.

## 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 affirms *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 Petitioner's sentence as a prison releasee reofficer on the authority of Yisrael v. State, 938 So.2d 546 (Fla. 4th DCA 2006). Perkins v. State, 31 Fla. L. Weekly D2443 (Fla. 4<sup>th</sup> DCA Sept. 27, 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) and certified conflict with Gray v. State, 910 So.2d 867 (Fla. 1<sup>st</sup> DCA 2005). Yisrael is pending review in this Court. See, Case No. SC06-2211 based upon certified direct conflict.

Given that the *per curiam* affirmance of Petitioner's sentence is upon the authority of 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 Court exercise its discretion to accept review of this cause.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy hereof has been furnished to DAVID



SCHULTZ, Assistant Attorney General, 1515 North Flagler Drive, Ninth Floor, West Palm Beach, Florida, 33401-2299 by courier this \_\_\_\_ day of November 2006.

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Appellate Attorney for Mr. Perkins

**CERTIFICATE OF FONT COMPLIANCE**

Undersigned Counsel hereby certifies that the Instant Jurisdiction Brief is submitted with Times Roman 14- point font in compliance with *Fla. R. App. P. 9.210*.

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MARCY K. ALLEN  
Appellate Counsel

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I HEREBY CERTIFY that a copy hereof has been furnished to DAVID SCHULTZ, Assistant Attorney General, 1515 North Flagler Drive, Ninth Floor, West Palm Beach, Florida, 33401-2299 by courier this \_\_\_\_ day of November 2006.

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