

IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. SC _____

VINTON ALRICK GRAHAM,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

RESPONDENT'S BRIEF ON JURISDICTION

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TABLE OF CONTENTS

TABLE OF CITATIONS.....ii

STATEMENT OF THE CASE AND FACTS1

SUMMARY OF THE ARGUMENT.....2

ARGUMENT.....3

BASED ON JOLLIE V. STATE, 405 SO. 2D 418 (FLA. 1981),
THIS COURT HAS DISCRETIONARY JURISDICTION OVER THIS CASE

CONCLUSION.....4

CERTIFICATE OF SERVICE.....4

CERTIFICATE OF COMPLIANCE.....5

TABLE OF CITATIONS

STATE CASES

Graham v. State, --- So.2d ----, 2007 WL 2428489 (Fla. 4th DCA August 29, 2007) 1, 2, 3

Jollie v. State, 405 So. 2d 418 (Fla. 1981) 3

Yisrael v. State, 938 So. 2d 546 (Fla. 4th DCA 2006),
rev. pending, case no. SC06 2211 (Fla. 2007) 3

STATEMENT OF THE CASE AND FACTS

The pertinent part of the district court's opinion is as follows:

Graham also challenges his prison releasee reoffender sentence, because the state relied on an affidavit of his prison record and releases, which he claims is hearsay. We have already addressed such affidavits in Yisrael v. State, 938 So.2d 546 (Fla. 4th DCA 2006) (en banc), rev. granted, 956 So.2d 458 (Fla.2007), and we have concluded that these affidavits do not constitute inadmissible hearsay. We decline to revisit it here. This issue is presently under consideration by our supreme court on conflict jurisdiction.

Affirmed.

Graham v. State, --- So.2d ----, 2007 WL 2428489 (Fla. 4th DCA August 29, 2007).

SUMMARY OF THE ARGUMENT

The State of Florida acknowledges that, based on Jollie v. State, 405 So. 2d 418 (Fla. 1981), this court has discretionary jurisdiction over this case. This court should accept jurisdiction and then stay the case pending the outcome of Yisrael v. State, 938 So. 2d 546 (Fla. 4th DCA 2006), rev. pending, case no. SC06 2211 (Fla. 2007).

ARGUMENT

BASED ON JOLLIE V. STATE, 405 SO. 2D 418 (FLA. 1981) THIS
COURT HAS DISCRETIONARY JURISDICTION OVER THIS CASE

In the decision below, Graham v. State, --- So.2d ----, 2007
WL 2428489 (Fla. 4th DCA August 29, 2007), the Fourth District
Court of Appeal affirmed Graham's prison releasee reoffender
sentence based, in part, on the authority of a case pending
review before this court. Yisrael v. State, case no. SC06-2211.

Based on Jollie v. State, 405 So. 2d 418 (Fla. 1981), this
court should accept discretionary jurisdiction and stay any
action in the present case until Yisrael v. State is decided.

CONCLUSION

Wherefore, based on the foregoing arguments and the authorities cited therein, the State of Florida respectfully requests this Court accept jurisdiction in this case and enter a stay pending the decision in Yisrael v. State.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing "Respondent's Brief of Jurisdiction" has been furnished by courier to: ELISABETH PORTER, Assistant Public Defender, 421 3rd Street, 6th Floor, West Palm Beach, FL 33401 on October _____, 2007.

Of counsel

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the instant brief has been prepared with 12 point Courier New type.

Jeanine Germanowicz

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RESPONDENT'S APPENDIX

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