

IN THE SUPREME COURT OF FLORIDA

VINTON ALRICK GRAHAM,)
)
 Petitioner/Appellant,)
)
 vs.) F.S.Ct. CASE NO. _____
) 4TH DCA CASE NO. 4D05-4893
 STATE OF FLORIDA,)
)
 Respondent/Appellee.)
 _____)

PETITIONER’S BRIEF ON DISCRETIONARY JURISDICTION

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PRELIMINARY STATEMENT

Petitioner was the Defendant in the Criminal Division of the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida, and the Appellant in the Fourth District Court of Appeal. Respondent was the Prosecution and the Appellee below.

In the brief, the parties will be referred to as they appear before this Honorable Court. The following symbols will be used:

“R” = Record on Appeal Documents

“T” = Record on Appeal Transcripts

“Supp. R” = Supplemental Record

“Supp. T” = Supplemental Transcript

“A” = Petitioner’s Appendix.

STATEMENT OF THE CASE AND FACTS

Petitioner, Vinton Alrick Graham, challenges his convictions for burglary, grand theft and resisting an officer without violence. (A 1-5). Appellant challenged his Prison Releasee Reoffender fifteen (15) year sentence (R 99-102, 123-124; T 190-206), based on the trial attorney's motion to preclude PRR sentencing (R 82-90; T 193-198), and appellate counsel's 3.800(b)(2) motion to correct sentencing error (Supp. R, unnumbered pages), based on hearsay, because Ms. Longsinger's last release date document closely resembled the affidavits, challenged in *Yisrael v. State*, 938 So. 2d 546 (Fla. 4th DCA 2006) (en banc), *rev. granted*, 956 So. 2d 458 (Fla. 2007). (A 1-5).

The Fourth District Court of Appeal affirmed, writing as follows: "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." (A 4).

Petitioner timely filed his Notice to Invoke Discretionary Jurisdiction on August 29, 2007. This brief on jurisdiction follows.

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 sentence on the authority of a case in which review is presently pending before this Court, *Yisrael v. State*, 938 So. 2d 546 (Fla. 4th DCA 2006) (*en banc*), *rev. pending*, *Yisrael v. State*, SC06-2211 (*jur. accepted*, Fla. May 9, 2007). Hence, Petitioner submits, if discretionary jurisdiction is not provided based on the requirements in *State v. Vickery*, 32 Fla. L. Weekly S425 (Fla. July 5, 2007) (unpublished opinion), discretionary jurisdiction is provided pursuant to *Jollie v. State*, 405 So. 2d 418 (Fla. 1981). In addition, once jurisdiction is accepted, Petitioner requests that this Court stay this cause pending the resolution of *Yisrael*..

ARGUMENT

**THIS COURT HAS DISCRETIONARY JURISDICTION
AS THE DECISION OF THE FOURTH DISTRICT
COURT OF APPEAL IN *GRAHAM V. STATE* RELIED
ON A DECISION IN WHICH REVIEW IS PRESENTLY
PENDING BEFORE THIS HONORABLE COURT.**

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

In the instant decision, *Graham v. State* (4D05-4893, issued August 29, 2007), the Fourth District Court of Appeal affirmed Petitioner's prison releasee reoffender (PRR) sentence on the authority of a case in which review is presently pending before this Honorable Court, *Yisrael v. State*, 938 So. 2d 546 (Fla. 4th DCA 2006) (*en banc*), *rev. pending*, *Yisrael v. State*, SC06-2211 (*jur. accepted*, Fla. May 9, 2007). The Fourth District, sitting *en banc*, rejected Yisrael's argument that the state had failed to establish the necessary predicate for his HVFO sentence, which relied upon *Gray v. State*, 910 So. 2d 867 (Fla. 1st DCA 2005) (holding that a prison release letter identical to the one at issue in *Yisrael* constituted inadmissible hearsay). *Yisrael v. State*, 938 So. 2d at 548-550. In doing so, the Fourth District certified conflict with *Gray*. *Id.* at 550.

Petitioner submits that discretionary jurisdiction is established by the Fourth District Court of Appeal affirmed, writing, "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.” (A 4). Although this written version does not include a word with the derivation from “certif.-”, it does include the other word of that bipartite, “conflict.” *See State v. Vickery*, 32 Fla. L. Weekly S425 (Fla. July 5, 2007) (unpublished opinion). Therefore, it is clear that the Fourth District Court of Appeal intended to certify conflict as it had in *Yisrael*, and that the outcome of this case in the Florida Supreme Court should be stayed pending the outcome in *Yisrael*.

In the alternative, Petitioner submits that discretionary jurisdiction is established by reference to the cited case. *See Jollie v. State*, 405 So. 2d 418 (Fla. 1981). In *Jollie*, this Court recognized that the “randomness of the District Court’s processing” should not control a party’s right to Supreme Court review. *Jollie*, 405 So. 2d at 421. Hence, this Honorable Court has discretionary jurisdiction to accept review of the instant cause from the Fourth District because the cited authority, *Yisrael*, is presently pending review before this Court.

This Court has discretionary jurisdiction pursuant to Article V, Section 3(b)(3) of the *Florida Constitution*. As this issue has a continuing statewide significance and there is conflict within the districts, this issue is appropriate to be resolved by this Honorable Court.

Therefore, this Court should exercise its discretionary review jurisdiction in order to afford Petitioner a resolution consistent with similarly-situated defendants such as Mr. Yisrael when this Court resolves the conflict between the districts on this frequently recurring issue.

CONCLUSION

Whereas, Petitioner prays this Honorable Court will exercise its discretion, provided pursuant to either *State v. Vickery* or *Jollie v. State*, and accept jurisdiction and review the decision of the Fourth District Court of Appeal. In addition, Petitioner requests that this Honorable Court stay this cause pending the resolution of *Yisrael v. State*, SC06-2211.

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: JEANINE M. GERMANOWICZ, 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 September, 2007.

Counsel for Petitioner

CERTIFICATE OF FONT SIZE

I HEREBY CERTIFY that Petitioner's Brief On Discretionary Jurisdiction has been prepared with 14 point Times New Roman type, in compliance with a *Fla. R. App. P.* 9.210(a)(2), this _____ day of September, 2007.

Attorney for Vinton Alrick Graham

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APPENDIX

PETITIONER’S BRIEF ON DISCRETIONARY JURISDICTION

Opinion of Fourth District Court of Appeal in
Vinton Alrick Graham v. State of Florida
4D05-4893
[August 29, 2007]

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the Appendix to Petitioner's Brief On Discretionary Jurisdiction has been furnished to: JEANINE M. GERMANOWICZ, 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 September, 2007.

Counsel for Petitioner