

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,
PETITIONER,

V

CASE NO SC07-1866
LOWER COURT CASE NO: 2D06-245

ALEXANDER WALKER,
RESPONDENT.

PETITIONER'S JURISDICTIONAL BRIEF
ON REVIEW FROM THE SECOND
DISTRICT COURT OF APPEAL
STATE OF FLORIDA

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TABLE OF AUTHORITIES

CASES

Collins v. State,
893 So. 2d 592 (Fla. 2nd DCA 2004) 8,9,10

STATEMENT OF THE CASE AND FACTS

Respondent was sentenced as an habitual offender. The lower court reversed because it concluded that the State (Petitioner herein) failed to provide sufficient proof of Respondent's prior record to justify the habitual offender sentence. On remand, the Second District Court of Appeal ordered that the State is required to impose a sentence pursuant to the Criminal Punishment Code, and that the State may not seek to impose an habitual offender sentence.

SUMMARY OF THE ARGUMENT

This Court has accepted jurisdiction in Collins v. State, 929 So. 2d 1054 (Fla. 2006), in which the identical issue is on review. Briefing in Collins is complete and an opinion is pending.

ARGUMENT

THIS COURT SHOULD ACCEPT JURISDICTION
TO CONSIDER THE SECOND DISTRICT'S
DECISION

I. Standard of Review:

This Court has discretionary jurisdiction to review cases arising from the district courts of appeal where a decision from one district court of appeal is certified to be in direct conflict with a decision of another district court of appeal pursuant to Fla. R. App. Proc.

9.030(a)(2)(A)(vi). Authority for conflict jurisdiction arises out of Article V section 3(B)(3) of the Florida Constitution, which grants this Court the power to review decisions which "expressly and directly conflict with a decision of another district court". Thus the standard of review at this point is whether Petitioner has established direct and express conflict in the decisional law of two different district courts of appeal within the State of Florida.

II. Argument:

This Court has accepted jurisdiction in Collins v. State, 929 So. 2d 1054 (Fla. 2006), in which the Second District Court of Appeal certified conflict with the First, Fourth, and Fifth Districts. The issue in Collins is

identical to the issue advanced in the instant case.
Further, the Second District identified Collins in the
opinion on review here as the basis for its ruling below.
Should this Court reverse the Second District in Collins,
the ruling will directly affect the outcome of the instant
case as the issues on appeal are identical.

Accordingly, this Court should accept jurisdiction in
this case.

CONCLUSION

Petitioner respectfully requests that this Honorable Court accept jurisdiction in this case.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished by U.S. Mail to: Kevin Briggs, Assistant Public Defender, Public Defender's Office, Polk County Courthouse, P.O. Box 9000, Drawer PD, Bartow, Florida 33831 on this 9th day of October, 2007.

CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 12-point Courier New, in compliance with Fla. R. App. P. 9.210(a)(2).

Respectfully submitted,

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APPENDIX

A. Second District Court Opinion filed September 26, 2007
- Walker v. State, ___ So. 2d ___, WL 2781695, (Fla. 2nd
DCA, September 26, 2007)