

IN THE SUPREME COURT OF THE STATE OF FLORIDA

| | | |
|--------------------|---|------------------------|
| CHRISTOPHER ALLEN, |) | |
| |) | |
| Petitioner |) | |
| |) | |
| v. |) | CASE NO. |
| |) | DCA CASE NO. 4D04-4972 |
| STATE OF FLORIDA, |) | |
| |) | |
| Respondent |) | |
| |) | |

PETITIONER’S BRIEF ON JURISDICTION

CAREY HAUGHWOUT
Public Defender
Fifteenth Judicial Circuit of Florida

JOHN M. CONWAY
Assistant Public Defender
Fla. Bar No. 0267724

The Criminal Justice Building
421 Third Street, 6th Floor
West Palm Beach, Florida 33401
(561) 355-7600
Appeals@pd15.state.fl.us

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PRELIMINARY STATEMENT

Petitioner, Christopher Allen, was the Defendant and Respondent, the 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

In the case at bar, the Fourth District Court of Appeal, *per curiam* affirmed on March 28, 2007, Petitioner's judgment and sentence with a citation to *Yisrael v. State*, 938 So.2d 546 (Fla. 4th DCA 2006). On April 19, 2007, Petitioner filed the notice to invoke discretionary review. *Yisrael* certified conflict with *Gray v. State*, 910 So.2d 867 (Fla. 1st DCA 2005).

SUMMARY OF THE ARGUMENT

The Fourth District Court of Appeal affirmed Petitioner's conviction and sentence *citing Yisrael v. State*, 938 So.2d 546 (Fla. 4th DCA 2006), a case now pending before this Court (SC06-2211). Pursuant to *Jollie v. State*, 405 So. 2d 418 (Fla. 1981), this Court has discretionary jurisdiction.

ARGUMENT

THIS COURT HAS AUTHORITY TO REVIEW A DECISION OF A DISTRICT COURT OF APPEAL AFFIRMING A JUDGMENT AND SENTENCE WITH A CITATION TO A CASE PENDING BEFORE THIS COURT.

This Court has jurisdiction to review a decision which *per curiam* affirmed a judgment and sentence with citation to a case now pending review before this Court. *Jollie v. State*, 405 So.2d 418 (Fla.1981). *International Paper Co. V. Florida Dept. of Revenue*, 913 So. 2d 541 (Fla. 2005);

In the case at bar, the Fourth District Court of Appeal *per curiam* affirmed with citation to *Yisrael v. State*, 938 So.2d 546 (Fla. 4th DCA 2006). (A1). In *Yisrael*, the Fourth District held that Department of Corrections documents were admissible at sentencing to establish a defendant 's release date from prison, as a public record exception to the hearsay rule pursuant to *Florida Statute*, §90.803(8) (2005). The District Court 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]. Because *Yisrael* is pending before this Court based upon a certified conflict, this Court should exercise its discretion to review the case at bar.

CONCLUSION

Based on the foregoing arguments and the authorities cited, Petitioner requests this Court exercise its discretion jurisdiction and to accept this case for review.

Respectfully submitted,

CAREY HAUGHWOUT
Public Defender
Fifteenth Judicial Circuit of Florida

JOHN M. CONWAY
Assistant Public Defender
Florida Bar No. 0267724
The Criminal Justice Building
421 Third Street, 6th Floor
West Palm Beach, Florida 33401
(561) 355-7600

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to JAMES CARNEY, Assistant Attorney General, Ninth Floor, 1515 N. Flagler Blvd., West Palm Beach, Florida, 33401-2299 by courier this 26th day of April, 2007.

Counsel for Petitioner

CERTIFICATE OF FONT COMPLIANCE

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

Counsel for Petitioner