

IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. SC 07\_\_\_\_\_

Dist. Ct. No. 4D06-3562

**STATE OF FLORIDA,**

Petitioner,

vs.

**FRANK PIACITELLI,**

Respondent.

**PETITIONER'S BRIEF ON JURISDICTION**

(PURSUANT TO JOLLIE V. STATE, 405 So. 2d 418 (Fla. 1981))

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**PRELIMINARY STATEMENT**

Petitioner was the prosecution and Respondent was the defendant in the Criminal Division of the Circuit Court of the Seventeenth Judicial Circuit, in and for Broward County, Florida.

Petitioner was the appellee and Respondent was the appellant in the Fourth District Court of Appeal. In this brief, the parties shall be referred to as they appear before this Honorable Court, except that Petitioner may also be referred to as "the State."

In this brief, the symbol "A" will be used to denote the appendix attached hereto.

All emphasis in this brief is supplied by Petitioner unless otherwise indicated.

**STATEMENT OF THE CASE AND FACTS**

an appeal from the denial of a 3.800(a) motion, the Fourth District reversed the denial and remanded the case for resentencing so that Petitioner's PRR sentence is not consecutive to the un-enhanced sentence for another crime arising from a single criminal episode (A. 2). In so doing, the Fourth District noted:

We are aware that the Fifth District has taken the position that PRR sentencing does not constitute a sentence "enhancement," thereby avoiding the consequences of *Hale v. State*, 630 So. 2d 521 (Fla. 1993). See *Reeves v. State*, 920 So. 2d 724 (Fla. 5<sup>th</sup> DCA)(affirming imposition of a single PRR sentence followed by consecutive criminal punishment code sentences for counts arising out of a single criminal episode), *review granted*, 933 So. 2d 521 (Fla. 2006).

artified conflict with Reeves based on its contrary decision as to whether Hale applies to PRR sentencing (A. 2).

**SUMMARY OF THE ARGUMENT**

This Court should exercise its discretionary jurisdiction to review the instant case pursuant to this Court's decision in Jollie v. State, 405 So. 2d 418 (Fla. 1981).

ARGUMENT

THIS COURT SHOULD EXERCISE ITS  
DISCRETIONARY JURISDICTION TO REVIEW THE  
DECISION IN THIS CASE WHICH CERTIFIES  
CONFLICT WITH A CASE PENDING REVIEW IN THIS  
COURT.

Florida Rules of Appellate Procedure provide that the discretionary jurisdiction of this Court may be sought to review

(A) decisions of district courts of appeal that

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(iv) expressly and directly conflict with a decision of another district court of appeal or of the supreme court on the same question of law;

\*\*\*\*

(vi) are certified to be in direct conflict with decisions of other district courts of appeal;

\*\*\*\*

Fla. R. App. P. 9.030(a)(2). See also Art. V, § (3)(b)(3), Fla. Const. (1968).

In the instant case, the Fourth District has certified conflict with Reeves v. State, 920 So. 2d 724 (Fla. 5th DCA), review granted, 933 So. 2d 521 (Fla. 2006). Because Reeves is currently pending before this court and is fully briefed and argued, Petitioner contends that this Court should exercise its discretionary jurisdiction pursuant to Jollie v. State, 405 So. 2d 418 (Fla. 1981).





**CONCLUSION**

sed upon the foregoing, Petitioner respectfully requests this Court to exercise its discretionary jurisdiction to review the instant case.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

HEREBY CERTIFY that a true and correct copy of the foregoing "Petitioner's Brief on Jurisdiction" has been furnished by United States Mail to: Frank Piacitelli, DC #197423, Everglades Correctional Institution, Post Office Box 949000, Miami, FL 33194, this\_\_\_\_\_ day of May, 2007.

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**CERTIFICATE OF TYPE SIZE AND STYLE**

I, undersigned hereby certifies that the instant brief has been prepared with 12 point Courier New type, a font that is not spaced proportionately.

\_\_\_\_\_  
MELYNDA L. MELEAR  
Assistant Attorney General

THE SUPREME COURT OF THE STATE OF FLORIDA

OF FLORIDA,

Petitioner,

CASE NO. SC\_\_\_\_\_

PIACITELLI,

Respondent.

\_\_\_\_\_/

**APPENDIX**

telli v. State, Case No. 4D06-3562 (Fla. 4<sup>th</sup> DCA May 2, 2007)