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STATEMENT OF THE CASE AND FACTS

In the Circuit Court for Sarasota County, the state filed an information charging Petitioner, John Christiansen, with aggravated assault, count one; felony battery, count two; and false imprisonment, count three. [R10-11] These offenses occurred on January 26, 2007. [R10-11] On November 27, 2007, Petitioner appeared for a plea hearing before Circuit Court Judge Charles Roberts. [T165] Petitioner entered a negotiated plea of no contest to the battery charge. [R138;T165-74] The terms of the plea negotiations called for the state to nolle prosequi counts one and three. [T165] The state subsequently entered a nolle prosequi to those offenses. [R155] A written plea form was filed. [R82]

The trial court adjudicated Petitioner guilty. [R138;T235] On November 28, 2007, the court sentenced Petitioner to fifty months imprisonment followed by ten months of probation. [R140-44;T236] A sentencing guidelines scoresheet was filed. [R95-96] The written order of sentencing was rendered on December 13, 2007. [R140-44] Petitioner filed a timely notice of appeal on January 2, 2008. [R147] On February 1, 2008, Petitioner filed a pro-se motion to withdraw his plea. [R156] The trial court denied this motion on the merits without a hearing. [R160-62]

On direct appeal Petitioner argued that the trial court should have appointed counsel and held an evidentiary hearing on

the motion to withdraw the plea. On October 29, 2008, the Second District Court of Appeal declined to grant this relief.

Christiansen v. State, 2008 WL 4726216 (Fla. 2d DCA Oct. 29, 2008). (Append. I) The court reversed the denial of the motion and remanded for the trial court to strike the pro se motion as a nullity. Petitioner filed a notice of intent to seek the discretionary jurisdiction of this court.

SUMMARY OF THE ARGUMENT

The decision of the Second District Court of Appeal directly conflicts with decisions of the Fourth District Court of Appeal, Bermudez v. State, 901 So. 2d 981 (Fla. 4<sup>th</sup> DCA 2005) and Peterson v. State, 881 So. 2d 1129 (Fla. 4<sup>th</sup> DCA 2004). The Second District certified this conflict as it did in Sheppard v. State, 988 So. 2d 74 (Fla. 2d DCA 2008), review granted, 990 So. 2d 1060 (Fla. September 29, 2008). This court should accept jurisdiction of this case to resolve the conflicting rulings of the district courts of appeal.

ARGUMENT

ISSUE

DOES THE DECISION OF THE SECOND  
DISTRICT COURT OF APPEAL DIRECTLY  
CONFLICT WITH THE DECISION OF  
ANOTHER DISTRICT COURT ON THE ISSUE  
OF WHETHER PETITIONER'S PRO-SE  
MOTION TO WITHDRAW HIS PLEA SHOULD  
BE STRICKEN AS A NULLITY BECAUSE HE  
WAS REPRESENTED BY COUNSEL AT THE  
TIME OF THE FILING OF THE MOTION?

On January 2, 2008, Petitioner filed a pro-se motion to withdraw his plea under Florida Rule of Criminal Procedure 3.170(1). [R156-57] Petitioner argued that his plea was neither intelligently nor voluntarily entered because his counsel pressured him into entering the plea. Petitioner maintained that his trial counsel coerced him into entering a plea by telling him that he would not receive a fair trial if the case went to a jury trial. [R156-57] According to Petitioner, his counsel informed him that he had no real choice but to enter a plea. [R157] The trial court denied this motion on the merits without appointing counsel or conducting a hearing. [R160-62] The Second District Court of Appeal ruled that the trial court should have stricken as a nullity the motion to withdraw the plea because Petitioner was represented by counsel. Christiansen v. State, 2008 WL 4726216 (Fla. 2d DCA Oct. 29, 2008). The district court certified conflict with the Fourth District Court of Appeal in Bermudez v.

State, 901 So. 2d 981 (Fla. 4<sup>th</sup> DCA 2005), and Peterson v. State, 881 So. 2d 1129 (Fla. 4<sup>th</sup> DCA 2004). Petitioner seeks the discretionary review of this court to resolve this conflict.

In Bermudez, the defendant also filed a pro-se motion to withdraw his plea. Bermudez, 901 So. 2d at 982. The defendant, in the motion, did not request to discharge counsel. The court rejected the argument that this motion was a nullity because the defendant was represented by counsel at the time of the filing of the motion. Id. at 984. Relying on its earlier decision in Peterson, supra, the court held that the defendant's assertions that his counsel misled him created "an adversarial relationship with his attorney and, therefore, preclude[d] the striking of his pro se motion." Id.

The above ruling in Bermudez is clearly at odds with the decision of the Second District Court of Appeal. The Second District stated, "The pro se motion to withdraw plea expressed dissatisfaction with counsel but did not contain an unequivocal request to discharge counsel; thus, the trial court should have stricken the motion as a nullity." Christiansen, supra. Recognizing the direct conflict with the Fourth District Court of Appeal, the Second District certified conflict with Bermudez and Peterson. Because the two district courts have addressed this issue and will likely again rule on the issue, this court should determine whether such a pro se pleading should be stricken as a nullity. This determination will resolve the express conflict in



the present case as certified by the Second District Court of Appeal. This court has already granted review of the same issue in Sheppard v. State, 988 So. 2d 74 (Fla. 2d DCA 2008), review granted, 990 So. 2d 1060 (Fla. September 29, 2008).

CONCLUSION

Based on the above arguments and authorities, Petitioner respectfully requests that this court exercise its discretionary jurisdiction of this case under Florida Rule of Appellate Procedure 9.030(2)(A)(iv).

APPENDIX

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CERTIFICATE OF SERVICE

I certify that a copy has been mailed to Jonathan Hurley, Concourse Center #4, 3507 E. Frontage Rd. - Suite 200, Tampa, FL 33607, (813) 287-7900, on this \_\_\_\_\_ day of November, 2008.

CERTIFICATION OF FONT SIZE

I hereby certify that this document was generated by computer using Microsoft Word with Courier New 12-point font in compliance with Fla. R. App. P. 9.210 (a)(2).

Respectfully submitted,

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