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STATEMENT OF THE CASE AND FACTS

On June 26, 2006, the Second District Court of Appeal issued an opinion in Collins v. State, 2D08-3601, (Fla. 2d DCA June 26, 2009)(See Appendix), that per curiam affirmed Petitioner's conviction citing as controlling authority Sheppard v. State, 988 So. 2d 74 (Fla. 2d DCA), review granted, 990 So. 2d 1060 (Fla. 2008).

A notice to invoke the discretionary jurisdiction of this Court was timely filed on July 20, 2009.

SUMMARY OF THE ARGUMENT

This Court has conflict jurisdiction pursuant to the case of Jollie v. State, 405 So. 2d 418 (Fla. 1981) because the opinion below cites as controlling authority a case currently pending before this Court. The discretionary jurisdiction of this Court should be exercised because the same issue is currently pending before the Court in a different case.

ARGUMENT
ISSUE

WHETHER THIS COURT HAS CONFLICT JURISDICTION
TO ACCEPT THE INSTANT CASE?

This Court has conflict jurisdiction pursuant to the decision in Jollie v. State, 405 So. 2d 418 (Fla. 1981), where this Court held that a per curiam opinion from a district court of appeal which cited as controlling authority a decision currently pending in the Florida Supreme Court was prima facie express conflict allowing this Court to exercise its jurisdiction.

In Collins v. State, 2D08-3601, (Fla. 2d DCA June 26, 2009)(See Appendix), that per curiam affirmed Petitioner's conviction citing as controlling authority Sheppard v. State, 988 So. 2d 74 (Fla. 2d DCA), review granted, 990 So. 2d 1060 (Fla. 2008). In Sheppard, the Second District held that motion to withdraw plea filed by an defendant with court-appointed counsel was a nullity and should have been stricken without a hearing unless the motion contained a request to discharge counsel or was adopted by counsel.

The opinion in Sheppard certified conflict with Peterson v. State, 881 So. 2d 1129 (Fla. 4th DCA 2004), and Bermudez v. State, 901 So. 2d 981 (Fla. 4th DCA 2005), which hold that a pro se motion to withdraw plea filed by a represented defendant should be not be stricken as a nullity where the allegations in the motion create an adversarial relationship with counsel. The

existence of conflict on this issue was also noted by the Fifth District Court of Appeal in Gonzales v. State, 993 So. 2d 55, 58 fn 3(Fla. 5th DCA 2008) which noted conflict between Sheppard and Peterson, as well as other cases in conflict with Sheppard.

This Court has jurisdiction to review this case under the criteria established in Jollie because the decision in Sheppard is currently before this Court. This Court has already accepted and heard oral argument on Sheppard. Therefore, this Court should also accept this case for review because it presents the same issue.

CONCLUSION

In light of the foregoing arguments, Petitioner respectfully requests this Court accept jurisdiction and review this case.

APPENDIX

PAGE NO.

1.

CERTIFICATE OF SERVICE

I certify that a copy has been mailed to Bill McCollum, Concourse Center #4, 3507 E. Frontage Rd. - Suite 200, Tampa, FL 33607, (813) 287-7900, on this _____ day of July, 2009.

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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