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STATEMENT OF THE CASE AND FACTS

As remarked by the Second District Court of Appeal, the facts in this case are simple:

The facts in this case are simple. Anucinski entered an unbargained-for, open plea to the trial court on charges of third-degree grand theft and dealing in stolen property (a second-degree felony). The two charges arose from a single scheme or course of conduct: Anucinski stole a ring from the Tiffany & Co. store located at a mall, biked to a pawn shop located on a nearby street, and pawned the ring the same day.

(Appendix A) Since Florida law prohibits dual convictions for theft and dealing in stolen property, which arise from a single scheme or course of conduct, the convictions were reversed.

The remedy for resolving the dual-conviction error, however, has divided Florida's District Courts of Appeal. Anucinski asked the Second District, consistent with the Florida Supreme Court's decision in *Hall v. State*, 826 So. 2d 268 (Fla. 2002),

to remand for the trial court to make a factual determination as to whether she was a 'common thief' who should be convicted of grand theft or a 'trafficker in stolen property' who should be convicted of dealing in stolen property, and to decide which conviction to vacate based on that determination.

(Appendix A). The State argued against that remedy and asked that the Second District "simply vacate the lesser conviction

of grand theft." (Appendix A). The Second District agreed with the State, reversed Anucinski's convictions and remanded with directions that the trial judge vacate the less serious conviction, i.e., the grand theft conviction. *See also Wilson v. State*, 884 So. 2d 74 (Fla. 2d DCA 2004).

ARGUMENT<sup>1</sup>

**The conflict between the decisions of the Second District Court and the decisions of the Florida Supreme Court and Fourth District Court, on the proper remedy for correcting dual-conviction errors, under Florida Statute section 812.025, after an unbargained-for plea should be resolved by this Court.**

Florida law prohibits dual convictions for theft and dealing in stolen property arising from the same scheme or course of conduct:

Notwithstanding any other provision of law, a single indictment or information may, under proper circumstances, charge theft and dealing in stolen property in connection with one scheme or course of conduct in separate counts that may be consolidated for trial, but the trier of fact may return a guilty verdict on one or the other, but not both, of the counts.

§ 812.025, Fla. Stat. (2009). In *Hall v. State*, 826 So. 2d 268 (Fla. 2002), the Supreme Court applied the dual-conviction to unbargained-for pleas:

Just as the trier of fact must make a choice if the defendant goes to trial, so too must the trial judge make a choice if the defendant enters a plea of nolo contendere to both counts. . . . Thus, we find that section 812.025 prohibits a trial court from adjudicating a defendant guilty of both theft and dealing in stolen property in connection with one scheme or course of conduct pursuant to a plea of nolo contendere.

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<sup>1</sup> Since Petitioner's argument for accepting discretionary jurisdiction is two

*Id.* at 271.

The *Hall* court remanded with directions for the trial judge to vacate one of the two convictions and resentence Hall on the remaining count, which conviction to vacate was left to the trial judge. *Id.* at 272. Here, the Second District court remedied the dual-conviction error by remanding with directions to vacate the less serious offense, rather than adopting the *Hall* remedy of remanding for the trial judge to choose which count to vacate. (Appendix A).

The remedy adopted and employed by the Second District Court of Appeal expressly and directly conflicts with the remedy adopted by the Florida Supreme Court, in *Hall v. State*, 826 So.2d 268 (Fla. 2002), and employed by the Fourth District Court, in *Pomaski v. State*, 989 So. 2d 721, 723 (Fla. 4<sup>th</sup> DCA 2008) ("the trial judge to determine which charge is supported by the record and correct the judgment to reflect either grand theft or dealing in stolen property."); See also *L.O.J. v. State*, 974 So. 2d 491, 493-4 (Fla. 4<sup>th</sup> DCA 2008) (reversing the adjudication of delinquency and disposition order with directions for the trial judge to vacate either the dealing in stolen property charge or the three counts of grand theft); *Gordon v. State*, 24 So. 3d 727, 728 (Fla. 4<sup>th</sup> DCA 2009) (reversing and remanding for the trial court to vacate one of the charges and resentence Gordon).

Similar, yet procedurally different, conflict arose among the  
(..continued)  
pages long, the summary of argument section has been omitted.

districts on the proper remedial action to correct dual-conviction errors under Florida Statute section 812.025 following appeals from jury convictions. Resolution of that conflict is pending before the Florida Supreme Court in two cases: *Williams v. State*, 66 So. 3d 360 (Fla. 2d DCA 2011), rev. granted, 70 So. 3d 588 (Fla. 2011)(SC11-1543) and *Blackmon v. State*, 58 So. 3d 343, 347 (Fla. 1<sup>st</sup> DCA 2011), rev granted, 67 So. 3d 198 (Fla. 2011)(SC11-903).

#### CONCLUSION

The inter-district conflict and the conflict between the Second District Court and this Court in *Hall*, on the proper remedy for correcting dual-conviction errors, under Florida Statute section 812.025, after an unbargained-for plea should be resolved by this Court.



CERTIFICATE OF SERVICE

I certify that a copy has been mailed to Pamela Jo Bondi, ESQ, Concourse Center #4, 3507 E. Frontage Rd. - Suite 200, Tampa, FL 33607, (813) 287-7900, on this \_\_\_\_\_ day of July, 2012.

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).

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APPENDIX

*Anucinski v. State*, 2D10-3557 (Fla. 2d DCA June 8, 2012).