

FLORIDA SUPREME COURT

STATE OF FLORIDA,)
)
 Petitioner,)
)
 vs.)
)
 HARRY JAMES CHUBBUCK,)
)
 Appellee.)
)
)
)
 _____)

CASE NO. SC12-657

RESPONDENT’S BRIEF ON JURISIDICIION

On review from the Fourth District Court of Appeal.

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TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES	ii
STATEMENT OF THE CASE AND FACTS	1
SUMMARY OF THE ARGUMENT	2
ARGUMENT	3
BECAUSE THE FOURTH DISTRICT’S DECISION CERTIFIED CONFLICT WITH DECISIONS OF OTHER DISTRICT COURTS OF APPEAL, THIS COURT MAY EXERCISE JURISDICTION IN THIS CASE. THIS COURT SHOULD DECLINE TO DO SO, HOWEVER.....	3
CONCLUSION	4
CERTIFICATE OF SERVICE	4
CERTIFICATE OF FONT	5

TABLE OF AUTHORITIES

Cases

Jackson v. State, 921 So.2d 611
(Fla. 2006)3

State v. Chubbuck, 83 So. 3d 918
(Fla. 4th DCA 2012).....3

State v. Frierson, 926 So.2d 1139
(Fla. 2006)3

Florida Constitution

Art. V, § 3(b)(4), Fla. Const.....3

Court Rules

Fla. R. App. P. 9.030(a)(2)(A)(vi)3

STATEMENT OF THE CASE AND FACTS

In accordance with Florida Rule of Appellate Procedure 9.120(d) and 9.210(c), respondent omits the Statement of the Case and Facts.

SUMMARY OF THE ARGUMENT

Although respondent agrees that this Court may exercise its jurisdiction in this case, this Court has the discretion to decline to exercise jurisdiction. This Court should decline to exercise jurisdiction due to Chubbuck's age (66 at sentencing), poor health (outlined in the Fourth District's opinion), and his need to put this case behind him as soon as possible. There will be other cases in which this issue can be resolved.

ARGUMENT

BECAUSE THE FOURTH DISTRICT'S DECISION CERTIFIED CONFLICT WITH DECISIONS OF OTHER DISTRICT COURTS OF APPEAL, THIS COURT MAY EXERCISE JURISDICTION IN THIS CASE. THIS COURT SHOULD DECLINE TO DO SO, HOWEVER.

The Fourth District of Appeal certified conflict, so respondent agrees that this Court may exercise its jurisdiction in this case. Art. V, § 3(b)(4), Fla. Const.; Fla. R. App. P. 9.030(a)(2)(A)(vi). This Court, however, has the discretion to *decline* to exercise jurisdiction. *See State v. Frierson*, 926 So.2d 1139, 1142 (Fla. 2006) (“Although we clearly have jurisdiction based upon the Fourth District’s certification, see art. V, § 3(b)(4), Fla. Const., we also have the discretion to determine that we should not exercise our jurisdiction in this case.”); *Jackson v. State*, 921 So.2d 611 (Fla. 2006) (declining to exercise jurisdiction).

This Court should decline to exercise jurisdiction due to Chubbuck’s age (66 at sentencing), poor health (outlined in the Fourth District’s opinion), and his need to put this case behind him as soon as possible. Moreover, the issue will come up again and it will not evade review. If other district courts adhere to the rule that the Fourth District rejected, those courts will certify conflict with *State v. Chubbuck*, 83 So. 3d 918 (Fla. 4th DCA 2012), and this Court can exercise jurisdiction in those cases.

CONCLUSION

This Court should decline to exercise jurisdiction.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been emailed to the Court at e-file@flcourts.org and furnished to Melanie Dale Surber, Assistant Attorney General, Office of the Attorney General, Ninth Floor, 1515 N. Flagler Drive, West Palm Beach, Florida 33401-3432, by courier this 15th day of May, 2012.

Paul E. Petillo

CERTIFICATE OF FONT

I HEREBY CERTIFY the instant brief has been prepared with 14 point Times New Roman type, in compliance with a Fla. R. App. P. 9.210(a)(2).

Paul E. Petillo