

TABLE OF CONTENTS

PAGE:

CITATION OF AUTHORITIES.....ii

ARGUMENT:

WHETHER THE ORDER OF AFFIRMANCE
IN THE PRESENT CASE IS AN OPIN-
ION IN THE SENSE OF A DISCUSSION,
ANALYSIS OR STATEMENT OF THE PRIN-
CIPLES OF LAW APPLIED IN REACHING
A DECISION AND IS IN EXPRESS AND
DIRECT CONFLICT WITH ANOTHER DE-
CISION.....1-2

CONCLUSION.....3

CERTIFICATE OF SERVICE.....3

CITATION OF AUTHORITIES

| <u>CASE:</u> | <u>PAGE:</u> |
|---|--------------|
| <u>Dodi Publishing Co. v Editorial America. S.A.,</u> 385 So.2d 1369 (Fla. 1980)..... | 1 |
| <u>Frederick v State,</u> 451 So.2d 1066 (Fla. 5th DCA 1984)..... | 2 |
| <u>Jenkins v State,</u> 385 So.2d 1356 (Fla. 1980)..... | 1 |
| <u>Jollie v State,</u> 405 So.2d 421 (Fla. 1981)..... | 2 |
| <u>State Farm Mutual Automobile Insurance Co. v Lawrence,</u> 401 So.2d 1326 (Fla. 1981) (Boyd, J., dissenting),..... | 2 |
| <u>Stevens v Jefferson,</u> 436 So.2d 33,35 (Fla. 1983) (Dissent)..... | 1 |

ARTICLES:

| | |
|--|---|
| Art. V, Section 3(b)(4), Florida Constitution..... | 1 |
| Art. V, Section 3(b)(3), Florida Constitution..... | 1 |

ARGUMENT

THE ORDER OF AFFIRMANCE IN THE PRESENT CASE IS NOT AN OPINION IN THE SENSE OF A DISCUSSION, ANALYSIS OR STATEMENT OF THE PRINCIPLES OF LAW APPLIED IN REACHING A DECISION AND IS NOT IN EXPRESS AND DIRECT CONFLICT WITH ANOTHER DECISION.

The order of affirmance is not an opinion in the sense of a discussion, analysis, or statement of the principles of law applied in reaching the decision. Therefore, it cannot be and is not in express and direct conflict with another decision. Art. V, § 3(b)(3), Fla. Const. Nor does the statement of the district court judges that they deem certain decisions to be in conflict with their decision in this case suffice as a certification of direct conflict. Art. V, § 3(b)(4), Fla. Const. Therefore, this Court does not have jurisdiction. See, Stevens v Jefferson, 436 So.2d 33,35 (Fla. 1983) (Dissent).

The district court's order merely cites several cases and suggests that some contrary authority exists. It does not contain any statement of law capable of causing confusion or disharmony in the law of the state. Therefore, it is not the kind of decision which article V, section 3(b)(3) contemplates as being reviewable by this Court. See, Dodi Publishing Co. v Editorial America, S.A., 385 So.2d 1369 (Fla. 1980); Jenkins v State, 385 So.2d 1356 (Fla. 1980). The mere suggestion by the district court that contrary authority exists without discussing any points of law, should not be deemed sufficient to create express and direct conflict. State Farm Mutual Automobile Insurance Co. v Lawrence, 401 So.2d 1326 (Fla. 1981)

(Boyd, J., dissenting).


Although Petitioner's conviction for burglary was affirmed upon the authority of a companion case, raising the same issue, now before this Court, Frederick v State, 451 So.2d 1066 (Fla. 5th DCA 1984), the language in the order of affirmance does not mandate review. But see, Jollie v State, 405 So. 2d 421 (Fla. 1981). Nor would the declining of jurisdiction by this Court leave Petitioner remediless as he may pursue relief in collateral proceedings, should a change in law be announced in the pending decision.

CONCLUSION

The decision of the District Court of Appeal, Fifth District, that the Petitioner seeks to have reviewed is not in direct and express conflict with the decision of the District Court of Appeal, Second District, in the cases of T.L.J. v State, 499 So.2d 1008 (Fla. 2d DCA 1984) and Bennett v State, 438 So.2d 1034 (Fla. 2d DCA 1983). Because of the reasons and authorities set forth in this brief, the Respondent requests this Court to decline to extend its discretionary jurisdiction in this cause.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing Respondent's Brief On Jurisdiction has been furnished by delivery to Brynn Newton, Assistant Public Defender, this 23rd day of October, 1984.


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