

IN THE SUPREME COURT OF FLORIDA

DEBBIE ANN TODD,

Petitioner

vs.

STATE OF FLORIDA,

Respondent.

CASE NO 66,061

FILED

SID J. WHITE

OCT 31 1984

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

PETITIONER'S BRIEF ON JURISDICTION

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TABLE OF CITATIONS

CASES CITED:

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OTHER AUTHORITIES:

Section 817.563, Florida Statutes (1981) 2

IN THE SUPREME COURT OF FLORIDA

DEBBIE ANN TODD,)
)
 Petitioner,)
)
vs.) CASE NO. 66,061
)
STATE OF FLORIDA,)
)
 Respondent.)
_____)

PETITIONER'S BRIEF ON JURISDICTION

PRELIMINARY STATEMENT

Petitioner was the Appellant in the Fifth District Court of Appeal and Respondent was the Appellee. In the brief the parties will be referred to as they appear before this Honorable Court.

In the brief the following symbol will be used:

"R" - Record on Appeal

STATEMENT OF THE CASE AND FACTS

Petitioner was charged by information filed in the Circuit Court of Orange County, Florida with one count of sale of a counterfeit substance in lieu of a controlled substance in violation of Section 817.563, Florida Statutes (1981)(R8). On December 6, 1983, Petitioner's motion to dismiss, grounded on the unconstitutionality of the Statute under which she was charged, was denied (R8). Petitioner entered a plea of nolo contendere to the charge, reserving the right to appeal the denial of the motion to dismiss (R11-15). Petitioner was placed on probation for a period of two years (R13-14,37-38).

Notice of appeal was timely filed on February 3, 1984 and on September 20,1984, the Fifth District Court of Appeal affirmed. (See appendix attached hereto). Notice to invoke this Honorable Court's jurisdiction was filed October 19, 1984.

QUESTION PRESENTED

WHETHER THE DECISION OF THE FIFTH
DISTRICT COURT OF APPEAL IN THE CASE
SUB JUDICE IS IN DIRECT CONFLICT WITH
THE DECISION OF STATE V. BUSSEY, 444
So.2d 63 (Fla. 4th DCA 1984).

ARGUMENT

ON THE AUTHORITY OF JOLLIE V. STATE,
405 So.2d 418 (Fla. 1981), THIS
HONORABLE COURT HAS JURISDICTION TO
ACCEPT THE INSTANT CASE FOR REVIEW.

In affirming the instant case, the Fifth District cited to its previous decision in State v. Bright, 451 So.2d 880 (Fla. 5th DCA 1984). The Court furthered acknowledged that the Fourth District had reached the contrary result on the same issue on State v. Bussey, 444 So.2d 63 (Fla. 4th DCA 1984).

Both State v. Bright, *supra* and State v. Bussey, *supra*, are currently pending before this Honorable Court respectively as Bright v. State, Case No. 65,689 and State v. Bussey, Case No. 64,966. In Jollie v. State, 405 So.2d 418 (Fla. 1981), this Court held:

Common sense dictates that this Court must acknowledge its own public record actions in dispensing with cases before it. We thus conclude that a district court of appeal per curiam opinion which cites as controlling authority a decision that is either pending review in or has been reversed by this Court continues to constitute prima facie express conflict and allows this Court to exercise its jurisdiction.

Thus this Court properly has jurisdiction to accept the

instant case for review. In the interest of judicial economy, Petitioner requests that this Court accept jurisdiction of her case and consolidate with the currently-pending Bright v. State, Case No. 65,689.

CONCLUSION

BASED ON the foregoing reasons and authority,
Petitioner respectfully requests this Honorable Court to exercise
its discretionary review and accept the instant case. Petitioner
further requests this Honorable Court to consolidate the instant
case with Bright v. State, Case No. 65,689.

Respectfully submitted,

JAMES B. GIBSON
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CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that a true and correct copy of the
foregoing has been served upon the Honorable Jim Smith, Attorney
General, 125 N. Ridgewood Avenue, Second Floor, Daytona Beach,
Florida 32014; and mailed to Debbie Ann Todd, Inmate No. 329234,
Route 2, Box 254, Aynor, South Carolina 29511, on this 29th day
of October, 1984.



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