

IN THE SUPREME COURT OF FLORIDA

CHARLES MICHAEL RAMSEY, )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 STATE OF FLORIDA, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

**FILED**

SID J. WHITE

NOV 27 1984

Case No. 66,167 CLERK, SUPREME COURT

By \_\_\_\_\_  
Chief/Deputy Clerk

PETITION FOR DISCRETIONARY REVIEW  
BASED UPON EXPRESS AND DIRECT CONFLICT

PETITIONER'S BRIEF ON JURISDICTION

JAMES B. GIBSON  
PUBLIC DEFENDER  
SEVENTH JUDICIAL CIRCUIT

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IN THE SUPREME COURT OF FLORIDA

CHARLES MICHAEL RAMSEY,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 66,167
	)	
STATE OF FLORIDA,	)	
	)	
Respondent.	)	
_____	)	

PETITIONER'S BRIEF ON JURISDICTION

STATEMENT OF THE CASE AND FACTS

Mr. Charles Michael Ramsey (hereafter Petitioner) was convicted of violation of §893.13(1)(a)(2) Fla.Stat. (1981)<sup>1/</sup> following a jury trial in the Circuit Court for Seminole County, the Honorable Dominick J. Salfi presiding, and sentenced to a four (4) year term of imprisonment.

On appeal to the Fifth District Court of Appeal, Petitioner challenged whether the Circuit Court had jurisdiction based upon an information that alternatively alleged the commission of a misdemeanor or a felony. On October 11, 1994 the Fifth District Court of Appeal, (Judge Cowart dissenting with opinion), held as follows:

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<sup>1/</sup> In pertinent part, the Information alleged that "...[Petitioner] on the 6th day of October, 1983, did then and there unlawfully and knowingly sell or deliver to James Gibson, or possess with intent to sell or deliver a controlled substance... to wit: CANNABIS, contrary to Section 893.13(1)(a)(2), Florida Statutes." (R 115)

PER CURIAM:

Affirmed on the authority of Fike  
v. State, No. 83-568 (Fla. 5th DCA  
September 13, 1984) [9 FLW 1932].

(See Appendix "A" attached hereto).

A Notice to Invoke Discretionary Jurisdiction based  
upon express and direct conflict was filed November 13, 1984.  
This brief follows.

ISSUE

WHETHER EXPRESS AND DIRECT CONFLICT  
EXISTS FOR THIS COURT TO REVIEW RAMSEY  
V. STATE, 9 FLW 2150 (FLA. 5TH DCA  
OCTOBER 11, 1984) PURSUANT TO ARTICLE V,  
SECTION (3) (b) (3), FLORIDA CONSTITUTION.

The Fifth District Court of Appeal affirmed Petitioner's conviction "on the authority of Fike v. State, No. 83-568 (Fla. 5th DCA September 13, 1984) [9 FLW 1932]." Discretionary review of Fike, id. by this Court is presently pending, Supreme Court Case No. 66,024.

A district court of appeal per curiam opinion which cites as controlling authority a decision that is pending review in the Supreme Court of Florida constitutes prima facie express conflict and allows the court to exercise its jurisdiction. Jollie v. State, 405 So.2d 418, 420 (Fla. 1981).


Accordingly, should this court exercise the discretionary jurisdiction in Fike, that same jurisdiction should be exercised to resolve the same question of law in the instant case.

CONCLUSION

Based upon the argument and authority cited herein, this Court is requested to exercise the jurisdiction that clearly exists.

Respectfully submitted,

JAMES B. GIBSON  
PUBLIC DEFENDER  
SEVENTH JUDICIAL CIRCUIT

  
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ATTORNEY FOR PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been mailed to the Honorable Jim Smith, Attorney General, 125 N. Ridgewood Avenue, Fourth Floor, Daytona Beach, Florida 32014 and to Mr. Charles Michael Ramsey, c/o Christian Prison Ministries, 2100 Brengle Avenue, Orlando, Florida 32803 this 26th day of November, 1984.

  
LARRY B. HENDERSON  
ASSISTANT PUBLIC DEFENDER