

TABLE OF CONTENTS

CITATION OF AUTHORITIES.....PAGE:
.....ii

ISSUE:

WHETHER EXPRESS AND DIRECT CONFLICT
EXISTS FOR THIS COURT TO REVIEW THE
INSTANT CASE PURSUANT TO ART. V, SEC-
TION (3)(b)(3), FLORIDA CONSTITUTION.....1-2

CONCLUSION.....3

CERTIFICATE OF SERVICE.....3

CITATION OF AUTHORITIES

CASE:

PAGE:

<u>Dodi Publishing Company v Editorial America, S.A.,</u>	
385 So.2d 1369(Fla. 1980).....	1
<u>Fike v State,</u>	
No. 83-568 (Fla. 5th DCA September 13,	
1984)[9 FLW 1932].....	1-2
<u>Jollie v State,</u>	
405 So.2d 418,420 (Fla. 1981).....	1
<u>Pope v State,</u>	
268 So.2d 173 (Fla. 2d DCA 1972).....	1
<u>Rogers v State,</u>	
336 So.2d 1233 (Fla. 4th DCA 1976).....	1

ISSUE

WHETHER EXPRESS AND DIRECT CONFLICT
EXISTS FOR THIS COURT TO REVIEW THE
INSTANT CASE PURSUANT TO ART. V, SEC-
TION (3)(b)(3), FLORIDA CONSTITUTION.

The Fifth District Court of Appeal affirmed the Petitioner's conviction on the authority of Fike v State, No. 83-568 (Fla. 5th DCA September 13, 1984)[9 FLW 1932]. In Dodi Publishing Company v Editorial America, S.A., 385 So.2d 1369, (Fla. 1980), this Court held that it did not have jurisdiction to review a district court decision rendered without an opinion other than a citation authority. Later, in Jollie v State, 405 So.2d 418, 420 (Fla. 1981), this Court determined that 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.

While Fike, supra, is before the court, it cannot be said that discretionary review of the decision in Fike is presently "pending", as this Court has not yet accepted jurisdiction. Fike, supra, is not then an opinion which is pending review, but is merely an opinion in which possible review may be had at some later point in time.

The Respondent adopts those arguments set forth in the respondent's brief on jurisdiction in Fike, supra, as reflecting that no express or direct conflict between Fike and the decisions of Pope v State, 268 So.2d 173 (Fla. 2d DCA 1972), and Rogers v State, 336 So.2d 1233 (Fla. 4th DCA 1976) exists.

There being no conflict jurisdiction in Fike, supra, the instant case is not a companion one that should travel with Fike, nor warrant the exercise of this Court's discretionary jurisdiction.

However, should this Court exercise its discretionary jurisdiction in Fike, supra, the Court's disposition of Fike would ultimately resolve any issue raised by the Petitioner sub judice, and at that time, it would be appropriate for the instant case to travel together with Fike.

CONCLUSION

Based on the foregoing arguments and authorities presented herein, Respondent respectfully prays this Honorable Court decline to exercise its discretionary jurisdiction in this cause.

Respectfully submitted,

JIM SMITH
ATTORNEY GENERAL



MARGENE A. ROPER
ASSISTANT ATTORNEY GENERAL
125 N. Ridgewood Ave.
Fourth Floor
Daytona Beach, Fl. 32014
(904) 252-1067

COUNSEL FOR RESPONDENT

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 James R. Wulchak, Assistant Public Defender, this 26th day of December, 1984.



MARGENE A. ROPER
COUNSEL FOR RESPONDENT