

IN THE SUPREME COURT OF FLORIDA

WENDALL J. CHATMAN,)
)
 Petitioner,)
)
 vs.)
)
 STATE OF FLORIDA,)
)
 Respondent.)
 _____)

Case No. 66,211

FILED

SID J. WHITE

DEC 10 1984

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk



PETITIONER'S BRIEF ON JURISDICTION

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

JAMES R. WULCHAK
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TABLE OF CITATIONS

CASES CITED:

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Fike v. State
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OTHER AUTHORITIES:

Article V, Section (3)(b)(3), Florida Constitution 3

Section 893.13(1)(a)(2), Florida Statutes 1

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 Petitioner,)
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PETITIONER'S BRIEF ON JURISDICTION

STATEMENT OF THE CASE AND FACTS

Wendall J. Chatman was charged by information with a violation of Section 893.13(1)(a)(2), Florida Statutes, by the unlawful sale or delivery of cannabis. (R47) The information did not allege an amount for the marijuana, nor did it allege that the delivery was for consideration. (R47) Following a no contest plea, the defendant was placed on one year's probation. (R48)

Following revocation of his probation and the imposition of a five-year prison sentence, the defendant appealed his case to the Fifth District Court of Appeal. On Appeal, the defendant challenged the Circuit Court's jurisdiction based upon an information which alternatively alleged the commission of a misdemeanor or felony.

On November 1, 1984, the District Court of Appeal,
Fifth District, (Judge Cowart dissenting with opinion), held
as follows:

PER CURIAM:

AFFIRMED. See Fike v. State,
No. 83-568 (Fla. 5th DCA Sept. 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 27,
1984. This brief follows.

ISSUE

WHETHER EXPRESS AND DIRECT
CONFLICT EXISTS FOR THIS COURT
TO REVIEW THE INSTANT CASE
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, supra, 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 juris-
diction. Jollie v. State, 405 So.2d 418, 420 (Fla. 1981).

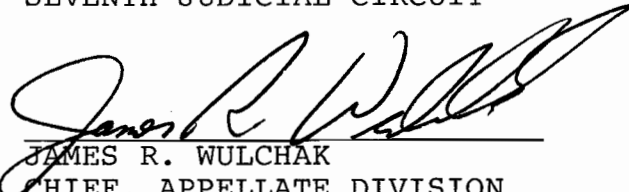
Accordingly, should this court exercise the discre-
tionary jurisdiction in Fike, that same jurisdiction should
be exercised to resolve the same question of law in the instant
case.

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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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the
foregoing has been delivered by mail to: The Honorable Jim Smith,
Attorney General, 125 N. Ridgewood Avenue, Daytona Beach, FL
32014 and Mr. Wendall J. Chatman, Inmate NO. 712009, P. O.
Box 699, Sneads, FL 32460 on this 7th day of December, 1984.



JAMES R. WULCHAK
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