

IN THE SUPREME COURT OF FLORIDA

ANICETO P. SANTIAGO,
Appellant,

vs.

STATE OF FLORIDA,
Appellee.

CASE NO. 66-297

FILED

SECRET

JAN 30 1985

CLERK, SUPREME COURT

By *m*
Chief Deputy Clerk

APPELLEE'S BRIEF ON JURISDICTION

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TOPICAL INDEX

	<u>PAGE(S)</u>
LIST OF CITATIONS	ii
STATEMENT OF THE CASE AND FACTS	1
ARGUMENT	2
CONCLUSION	4
CERTIFICATE OF SERVICE	5

LIST OF CITATIONS

	<u>PAGE(S)</u>
Barnett v. State, 444 So.2d 967 (Fla. 1st DCA 1983)	2
Callaghan v. State, 10 FLW 8 (Fla. 4th DCA 1985)	2
Fletcher v. State, 9 FLW 2149 (Fla. 5th DCA 1984)	2,3
Mischler v. State, 9 FLW 2205 (Fla. 4th DCA 1984)	2,3
Williams v. State, 9 FLW 2533 (Fla. 4th DCA 1984)	2

STATEMENT OF THE CASE AND FACTS

The Appellee, State of Florida, accepts the Appellant's statements.

ARGUMENT

IT IS SUGGESTED THAT THIS HONORABLE
COURT NOT ACCEPT THIS CASE.

The Appellee is required to establish express and direct conflict between decisions of two district courts of appeal or a decision of the district court and the Supreme Court on the same point of law. Fla.R.App.P. 9.030(a)(2)(A)(iv).

The Appellant/Petitioner cites Fletcher v. State, 9 FLW 2149 (Fla. 5th DCA 1984); Mischler v. State, 9 FLW 2205 (Fla. 4th DCA 1984); Williams v. State, 9 FLW 2533 (Fla. 4th DCA 1984) and Callaghan v. State, 10 FLW 8 (Fla. 4th DCA 1985) as authorities providing that conflict.

The decision at bar was published on November 28, 1984. Williams v. State, 9 FLW 2533 (Fla. 4th DCA 1984) and Callaghan v. State, 10 FLW 8 (Fla. 4th DCA 1985) were decided after this case. Thus, while Callaghan and Williams may conflict with our case, our case cannot "conflict" with a subsequent decision and thus qualify for review. see Barnett v. State, 444 So.2d 967 (Fla. 1st DCA 1983); (decision on Motion for Rehearing). It is suggested, therefore, that we cannot consider these two cases.

As to the remaining cases. Fletcher did not address the same aggravating circumstances considered by the First District in the case at bar. Fletcher fell upon a court's improper comment on the defendant's lifestyle ("a regular street prostitute") and consideration of the element of "forceful taking" when the

defendant had been found not guilty of armed robbery and merely guilty of grand theft.

Similarly, Mischler cited "lack of response," the fact that "white collar crimes" (an undefined term) deserved greater punishment, the financial status of the victim and the defendant's fiduciary relationship with the victim.

While the Petitioner attempts to analogize the rejection of those factors to the acceptance of the stated factors in our case, the fact remains that abstract analogies cannot provide express and direct conflict.

Fletcher, Mischler, and the case at bar all recognize judicial sentencing discretion.

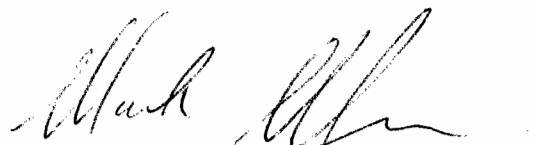
Discretionary review should not be granted.

CONCLUSION

It is suggested that this Honorable Court not invoke its discretionary review powers to review a decision of the First District which is not in express or direct conflict with any prior decision of this Court or another District Court of appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Appellee's Brief on Jurisdiction has been forwarded by U.S. Mail to Counsel for Appellant, Ted A. Stokes, Post Office Box 84, Milton, Florida 32572, this 30th day of January, 1985.



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