

IN THE SUPREME COURT OF FLORIDA

DORIS MOBLEY, )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 STATE OF FLORIDA, )  
 )  
 Respondent. )  
 )  
 \_\_\_\_\_ )

CASE NO. 66,301 JAN 11 1985

**FILED**  
SID J. WHITE  
CLERK, SUPREME COURT  
By \_\_\_\_\_  
Chief Deputy Clerk

RESPONDENT'S BRIEF ON JURISDICTION

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## 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?

## ARGUMENT

The Fifth District Court of Appeal affirmed the petitioner's conviction on the authority of Fike v. State, 455 So.2d 628 (Fla. 5th DCA 1984). In Jollie v. State, 405 So.2d 418 (Fla. 1981), this court determined that a district court of appeal's per curiam opinion which cites as controlling authority a decision that is pending review in the Supreme Court of Florida, constitutes a prima facie express conflict and allows the court to exercise its jurisdiction.

Petitioner's reliance upon Jollie, supra, is misplaced for two reasons. First, the decision in the instant case is not a per curiam affirmance. Second, Fike, supra, is not pending review. Respondent recognizes that discretionary review has been sought in Fike, supra, but the court has not yet accepted jurisdiction. Therefore, it is not an opinion which is pending review, but is merely an opinion in which possible review may be had at some later point in time.

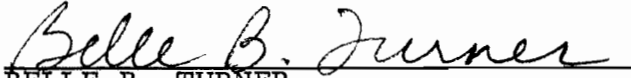
Further, had the fifth district intended to cite Fike, supra, as a controlling decision as opposed to a counsel-advising case, it would have withheld mandate pending final disposition of Fike, supra, in accordance with this Court's suggestion in Jollie, supra. Mandate in this case was issued on January 2, 1985.

CONCLUSION

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

Respectfully submitted,

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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 Lucinda H. Young, Assistant Public Defender for Petitioner (1012 S. Ridgewood Avenue, Daytona Beach, Florida 32014-6183), this 10th day of January, 1985.

  
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