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TABLE OF CITATIONS

CASES CITED:

PAGE NO.

Fike v. State

No. 83-568 (Fla. 5th DCA September 13, 1984)
[9 FLW 1932]

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Jollie v. State

405 So.2d 418 (Fla. 1981)

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OTHER AUTHORITIES:

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

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STATEMENT OF THE CASE AND FACTS

The State filed an information charging Petitioner, DORIS MOBLEY, with possession of cannabis, and with sale or delivery of cannabis (R48). She pleaded nolo contendere to Count Two of the information which stated in relevant part:

DORIS MOBLEY of the County of Hernando, and the State of Florida, on the 18th day of November, 1981, in the County and State aforesaid did unlawfully and feloniously sell or deliver to another person, cannabis, a controlled substance commonly known as marijuana, in violation of Florida Statute 893.3(1)(a)(2) ... (Emphasis supplied).

Pursuant to her plea, Petitioner was placed on probation for three (3) years (R49). Her probation was subsequently revoked and she was sentenced to thirty (30) months in the Department of Corrections (R58-60).

Petitioner appealed to the Fifth District Court of Appeal, contending that the information was not sufficient to invoke circuit court jurisdiction because it charged her, in the alternative, with a felony or a misdemeanor.

On November 1, 1984, the Fifth District affirmed her conviction based on its decision in Fike v. State, No. 83-568 (Fla. 5th DCA September 13, 1984) [9 FLW 1932], petition for review pending in Supreme Court Case No. 66,024. Doris Mobley v. State, Case No. 83-833 (Fla. 5th DCA November 1, 1984) [9 FLW 2266].

Petitioner filed a motion to correct opinion on

November 1, 1984. The Fifth District Court of Appeal granted this motion on December 13, 1984.

Petitioner filed a timely Notice to Invoke Discretionary Jurisdiction on December 13, 1984.

ISSUE

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

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 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

For: David A. Henson
LUCINDA H. YOUNG
ASSISTANT PUBLIC DEFENDER
1012 South Ridgewood Avenue
Daytona Beach, Florida 32014-6183
Phone: 904/252-3367

ATTORNEY FOR PETITIONER

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that a true and correct copy of the
foregoing has been served upon the Honorable Jim Smith, Attorney
General, 125 N. Ridgewood Avenue, Fourth Floor, Daytona Beach,
Florida 32014; and mailed to Doris Mobley, Inmate No. 803684,
Florida Correctional Institute, P.O. Box 147, Lowell, Florida
32663, on this 21st day of December, 1984.

For: David A. Henson
LUCINDA H. YOUNG
ASSISTANT PUBLIC DEFENDER