

IN THE SUPREME COURT OF FLORIDA

FILED

SID J. WHITE

JAN 16 1985

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

JAMES CLARIN GREGORY,

Petitioner,

v.

CASE NO. 66,317

STATE OF FLORIDA,

Respondent.

RESPONDENT'S BRIEF ON JURISDICTION

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ISSUE

WHETHER EXPRESS AND DIRECT CON-
FLICT 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 appellant's conviction and sentence on the authority of Hendrix v. State, 9 F.L.W. 1697 (no. 83-1702)[Fla. 5th DCA, Aug. 2, 1984]. Discretionary review of Hendrix, supra, by this court is presently pending, Supreme Court Case No. 65,928.

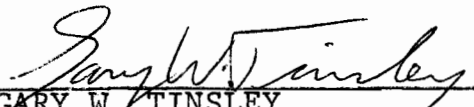
As of this point in time, review of the Hendrix decision has not been granted. If review of that decision is denied, then review of the instant cause should be denied. Inasmuch as both cases present the same, single issue for review (whether or not prior record which is scored on the guidelines scoresheet may be used as a basis for departure), it appears that if review is granted in the Hendrix case, review in the instant cause should also be granted. Jollie v. State, 405 So.2d 418, 420 (Fla. 1981).

CONCLUSION

Based upon the argument and authorities cited herein, this court should exercise jurisdiction over the instant case only upon similar exercise of jurisdiction in the Hendrix case.

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 is furnished by delivery to Daniel J. Schafer, Assistant Public Defender, 1012 South Ridgewood Avenue, Daytona Beach, Fl. 32014-6183, this 15TH day of January, 1985.


GARY W. TINSLEY
COUNSEL FOR RESPONDENT