

IN THE FLORIDA SUPREME COURT

GEORGE W. BURCH,  
Petitioner,

vs.

CASE NO. 66,493

STATE OF FLORIDA,  
Respondent.

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**FILED**

ROD J. WHITE

MAR 4 1985

CLERK, SUPREME COURT

By \_\_\_\_\_  
Chief Deputy Clerk

RESPONDENT'S BRIEF ON JURISDICTION

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AUTHORITIES CITED

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PRELIMINARY STATEMENT

George W. Burch, the criminal defendant and appellant in Burch v. State, 10 F.L.W. 167 (Fla. 1st DCA Jan. 11, 1985), will be referred to herein as Petitioner. The State of Florida, the prosecution and appellee below will be referred to herein as Respondent.

Respondent has attached hereto an appendix containing the opinion of the lower court.

STATEMENT OF THE CASE AND FACTS

Respondent, for purposes of resolving the narrow jurisdictional issue raised herein, accepts as accurate Petitioner's Statement of the Case and Facts set forth at page 2 of his jurisdictional brief.

STATEMENT OF JURISDICTION

Petitioner seeks to invoke this Court's discretionary review of the decision below pursuant to Article V, Section 3(b)(3) of the Constitution of the State of Florida and Fla. R.App.P. 9.030(a)(2)(A)(iv) on the ground that said decision is in express and direct conflict with a decision of another district court of appeal on the same question of law.

SUMMARY OF ARGUMENT

Respondent agrees that there is conflict between the decision of the lower court and another district court of appeal.

ARGUMENT

RESPONDENT CONCURS WITH PETITIONER'S  
ASSERTION THAT THE REQUISITE CONFLICT  
BETWEEN THE DECISION BELOW AND THAT  
OF ANOTHER DISTRICT COURT OF APPEAL HAS  
BEEN ESTABLISHED.

Respondent agrees that the apparent conflict between Burch v. State, 10 F.L.W. 167 (Fla. 1st DCA Jan. 11, 1985), review pending, Case No. 66,471, Weems v. State, 451 So.2d 1207 (Fla. 2d DCA 1984), discretionary review pending, Case No. 65,593 and Harvey v. State, 450 So.2d 926 (Fla. 4th DCA 1984) should be resolved and adds that the merits of this cause are so interwoven with the certified question in State v. Burch, Case No. 66,471, that Respondent joins in Petitioner's request that this Court grant discretionary review in this cause pursuant to Article V, Section 3(b)(3) of the Constitution of the State of Florida and Fla.R.App.P. 9.030(a)(2)(A)(iv).

CONCLUSION

Based upon the foregoing argument and the authority cited herein, Respondent submits that Petitioner has established the requisite conflict for purposes of invoking this Court's discretionary review of the decision below.

WHEREFORE, Respondent respectfully moves this Honorable Court to grant conflict certiorari review over the decision below, set the cause for oral argument, and following briefing on the merits, affirm the sentence sought to be reviewed.

Respectfully submitted:

JIM SMITH  
ATTORNEY GENERAL

  
\_\_\_\_\_  
GARY L. PRINTY  
Assistant Attorney General

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COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been forwarded to Glenna Joyce Reeves, Assistant Public Defender, Post Office Box 671, Tallahassee, Florida 32302, this 4th day of March, 1985.

  
\_\_\_\_\_  
GARY L. PRINTY