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PRELIMINARY STATEMENT

Respondent was the defendant in the Criminal Division of the Circuit Court of the Seventeenth Judicial Circuit, In and For Broward County, Florida, and the appellant in the District Court of Appeal, Fourth District. Petitioner was the prosecution and appellee in the lower courts. The parties will be referred to as they appear before this Court.

STATEMENT OF CASE AND FACTS

Respondent accepts Petitioner's Statement of the Case and
Facts.

ARGUMENT

THIS COURT SHOULD DECLINE TO ACCEPT JURIS-
DICTION OF THE PRESENT CASE.

In Jollie v. State, 405 So.2d 418 (Fla. 1981), this Court formulated its rule that, where a district court of appeal issues a "citation PCA" decision in a case, and the cited case has either been reversed or is pending review before this Court, discretionary jurisdiction will lie. Petitioner seeks application of that rule to the present case, wherein the Fourth District Court of Appeal cited to Boynton v. State, 10 F.L.W. 795 (Fla. 4th DCA March 27, 1985), which is presently pending before this Court on the question of whether the trial court must state its reasons for departing from the sentencing guidelines in writing. State v. Boynton, Supreme Court case No. 66, 971.

Respondent agrees that Jollie v. State, supra, allows this Court to accept jurisdiction of this case. However, not addressed by Petitioner is the question of whether this Court should exercise its discretionary jurisdiction to accept review. The issue decided in Boynton, is one on which, after an initial period of confusion, see, Harvey v. State, 450 So.2d 926 (Fla. 4th DCA 1984), the district courts of appeal appear to be re-aligning themselves in agreement with the Fourth District Court of Appeal's well-reasoned decision in Boynton.¹ Jackson v. State, 454 So.2d 691 (Fla. 1st DCA 1984); See, State v.

¹ The opinion in Boynton was written by Judge Rosemary Barkett, a member, while on the circuit court bench, of the commission which proposed the sentencing guidelines, and thus presumptively familiar with the intent of that commission in requiring that reasons for departure from the guidelines sentence be in writing.

Williams 463 So.2d 525 (Fla. 3d DCA 1985) [Notice of appeal filed before entry of written order stating reasons for departure from guidelines sentence would be premature.] Although the Second and Fifth District Courts of Appeal are apparently persisting in their contrary rulings, Klapp v. State, 456 So.2d 970 (Fla. 2d DCA 1984); Burke v. State, 456 So.2d 1245 (Fla. 5th DCA 1984), the conflict in decisions may readily be resolved by this Court in its opinion deciding Boynton v. State, supra, without the necessity of bringing the instant case up for review as well.

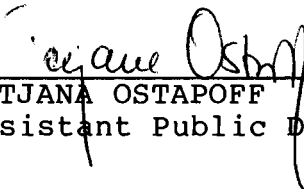
Finally, Respondent notes that the Fourth District Court of Appeal has denied the State's motion for stay of mandate, and the mandate was in fact issued on June 7, 1985. Consequently, the trial court is already in the process of perfecting its written order in this case, so that the issue as to which Petitioner bases this Court's jurisdiction will, in any event, be moot by the time any decision on the merits in this cause could be reached. Consequently, Respondent suggests that this Court exercise its discretion and deny jurisdiction in this case.

CONCLUSION

Based on the foregoing argument, Respondent requests that this Court deny jurisdiction.

Respectfully submitted,

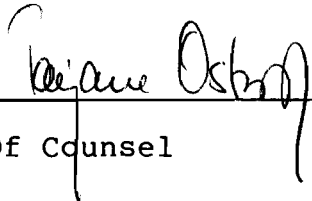
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to ROBERT TEITLER, Assistant Attorney General, Elisha Newton Dimick Building, Suite 204, 111 Georgia Avenue, West Palm Beach, Florida, 33401 by courier this 18th day of June, 1985.



Of Counsel