

67,357

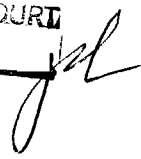
IN THE SUPREME COURT OF FLORIDA

MELVIN EUGENE DANIELS,)
)
 Petitioner,)
)
 vs.)
)
 STATE OF FLORIDA,)
)
 Respondent.)
)
 _____)

CASE NO. 84-1353

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk



PETITIONER'S BRIEF ON JURISDICTION

RICHARD L. JORANDBY
 Public Defender
 15th Judicial Circuit of Florida
 224 Datura Street/13th Floor
 West Palm Beach, Florida 33401
 (305) 837-2150

TATJANA OSTAPOFF
 Assistant Public Defender
 Counsel for Petitioner

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF CONTENTS	i
AUTHORITIES CITED	ii
PRELIMINARY STATEMENT	1
STATEMENT OF THE CASE AND FACTS	2
ARGUMENT	
DIRECT AND EXPRESS CONFLICT EXISTS BETWEEN THE DECISION IN THE PRESENT CASE AND THE DECISION OF THE THIRD DISTRICT COURT OF APPEAL IN SHEPPARD v. STATE.	3
CONCLUSION	4
CERTIFICATE OF SERVICE	4

AUTHORITY CITED

	<u>PAGE</u>
<u>Sheppard v. State</u> , 459 So.2d 460 (Fla. 3d DCA 1984)	2,3

PRELIMINARY STATEMENT

Petitioner was the defendant in the Criminal Division of the Circuit Court of the Seventeenth Judicial Circuit, In and for Broward County, Florida, and appellant in the District Court of Appeal, Fourth District. Respondent 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

After being convicted of attempted sexual battery, burglary, and kidnapping, Petitioner was sentenced to serve a total of twenty-two (22) years in prison on those charges, to run concurrent to a one year sentence imposed as a result of the revocation of petitioner's probation based on the same conduct. Petitioner was not given credit on the twenty-two (22) year sentence for the time he served in jail awaiting trial. Credit was applied only against his one year sentence. The Fourth District Court of Appeal, in its decision on Petitioner's direct appeal from these conviction, directed that Petitioner be given credit for time served, since all his sentences were concurrent, but noted the contrary authority of Shepard v. State, 459 So.2d 460 (Fla. 3d DCA 1984).

Petitioner noticed his intention to invoke the discretionary jurisdiction of this Court on July 12, 1985, 30 days from the date of the district court's decision.¹ This jurisdictional brief follows.

¹ Although Respondent filed a "Motion for Reconsideration" in the Fourth District Court of appeal on June 21, 1985, such a motion is not a "motion for rehearing" under R.App.P. 9.330 and may not toll the time for filing the notice seeking discretionary review in this Court. For this reason, Petitioner filed his notice even though the Fourth District Court of appeal has not yet ruled on Respondent's motion.

ARGUMENT

POINT

DIRECT AND EXPRESS CONFLICT EXISTS BETWEEN THE
DECISION IN THE PRESENT CASE AND THE DECISION
OF THE THIRD DISTRICT COURT OF APPEAL IN
SHEPARD v. STATE.

In Shepard v. State, 459 So.2d 460 (Fla. 3d DCA 1984) [see, Appendix] the Third District Court of Appeal held that the imposition of concurrent sentences did not compel the granting of credit on each sentence for all jail time served awaiting trial on the charges. This holding allows credit to be given on one sentence but withheld on the concurrent sentence - with the practical result that the defendant is given no credit by the Department of Corrections toward service of his sentence. This is directly contrary to the decision of the Fourth District Court of Appeal in the present case, as was expressly recognized in the Court's opinion, which held that a defendant must be given credit for time served on each of the several concurrent sentences imposed.

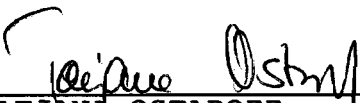
Because the conflict raised is both direct and express, this Court has jurisdiction to review the instant case. Moreover, the kind of inter-district conflict which is demonstrated here is precisely the type of matter which can only be resolved by this Court. Consequently, this Court should accept jurisdiction of this cause and proceed to disposition of the merits of the issue after briefing on the merits by the parties.

CONCLUSION

Based on the foregoing argument and the authorities cited, Petitioner requests that this Court accept jurisdiction of this cause.

Respectfully submitted,

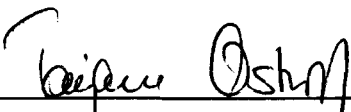
RICHARD L. JORANDBY
Public Defender
15th Judicial Circuit of Florida
224 Datura Street/13th Floor
West Palm Beach, Florida 33401
(305) 837-2150



TATJANA OSTAPOFF
Assistant Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to ROBERT JAEGER, Assistant Attorney General, Elisha Newton Dimick Building, Suite 204, 111 Georgia Avenue, West Palm Beach, Florida, 33401 by courier this 19th day of July, 1985.



Of Counsel