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SUMMARY OF ARGUMENT

No conflict exists between the district court of appeal on the point of law addressed below, all cases relied upon by petitioner being distinguishable from the instant appeal. This court should not exercise its discretionary jurisdiction in this appeal.

POINT ON APPEAL

THIS COURT SHOULD NOT EXERCISE ITS
DISCRETIONARY JURISDICTION AS NO
CONFLICT EXISTS AMONG THE DISTRICT
COURTS OF APPEAL.

ARGUMENT

Petitioner, who was originally charged with conspiracy to traffic in cocaine and trafficking in cocaine, seeks to invoke the discretionary review of this court, alleging that the decision of the Fifth District Court of Appeal is in direct conflict with the decisions of other district courts of appeal on the same question of law. Respondent respectfully disagrees. The decision rendered by the Fifth District Court of Appeal in this case adequately demonstrates lack of conflict with the cases relied upon by petitioner.

In State v. Littlefield, 457 So.2d 558 (Fla. 4th DCA 1984), unlike in the instant appeal, the state never took action to secure an extension of the defendant's speedy trial limit as required by Florida Rule of Criminal Procedure 3.191(d)(2). Discharge was granted on that basis. The Writ of Prohibition in Bustos v. Fleet, 461 So.2d 1039 (Fla. 4th DCA 1985), was granted on the basis of Littlefield, and Bustos is likewise inapplicable to the present appeal.

In Westlake v. Miner, 460 So.2d 430 (Fla. 1st DCA 1984), the state had moved for an extension of time in large part because of the "convenience to the state of trying both defendants at once." In the instant case, the state moved for extension because one of the charged offenses was a conspiracy; the charged offenses were based on the same act and transactions; the granting of con-

tinuances to appellant's co-defendants could not be anticipated, and the interests of justice would be better served. Additionally, the defendant in Westlake was charged with grand theft, a crime far less complicated than conspiracy to traffic in cocaine.

Similarly, in Machado v. State, 431 So.2d 337 (Fla. 2d DCA 1983), the defendant was charged with burglary and grand theft. Discharge was granted because the need for an interpreter at trial for a co-defendant was an avoidable and foreseeable delay and not an exceptional circumstance justifying extension of the defendant's speedy trial limit. In the instant case, there was no such issue of avoidable or foreseeable delay.

In Darby v. State, 463 So.2d 496 (Fla. 1st DCA 1985), the defendant was charged, as in Westlake, with grand theft. An extension of time was granted when the state opposed severance, stating only that two trials would cause an undue burden on the state. In the instant appeal, as explained regarding Westlake, supra, the state moved for extension for different and more compelling reasons.

Petitioner's reliance on State v. Dante, 467 So.2d 744 (Fla. 3d DCA 1985), and State v. Barreiro, 460 So.2d 945 (Fla. 3d DCA 1985), is entirely misplaced. The issues in these cases are totally unrelated to the point of law in this appeal.

Rico v. State, 463 So.2d 1172 (Fla. 2d DCA 1984), is distinguishable from the instant appeal as well. There, unlike in the instant case, the prosecutor did not offer any argument suggesting why the defendant should be tried with the co-defendants.

Additionally, the prosecutor said the case was not complicated. The record disclosed nothing to support the assertion

that an extension was necessary to accomodate the co-defendants.

In the instant appeal, petitioner never appealed the denial of his motion for severance. Thus, it is clear from the foregoing, and the opinion of the Fifth District Court of Appeal, that there is no conflict among the district courts of appeal on that point of law addressed below.

CONCLUSION

Based on the arguments and authorities presented herein, respondent respectfully requests this honorable court deny discretionary jurisdiction and affirm the judgement and sentence of the Fifth District Court of Appeal in all respects.

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 has been furnished by mail to John W. Tanner, P.A., Tanner and Lambert, 630 N. Wild Olive Avenue, Suite A, Daytona Beach, Florida 32018, and counsel for the petitioner, this 6 day of November, 1985.



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