

IN THE SUPREME COURT OF FLORIDA

FILED
JUL 11 1983
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Deputy Clerk

STATE OF FLORIDA,)
)
 Petitioner,)
)
 vs.)
)
 LARRY TEAGUE,)
)
 Respondent.)
 _____)

CASE NO. 69,034

RESPONDENT'S BRIEF ON JURISDICTION

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

MICHAEL S. BECKER
ASSISTANT PUBLIC DEFENDER
112 Orange Ave., Ste. A
Daytona Beach, FL 32014
(904) 252-3367

ATTORNEY FOR RESPONDENT

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TABLE OF CITATIONS

CASES CITED:

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State v. Vicknair
Case No. 68,536 (Fla. Sup. Ct., pending)

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Vicknair v. State
483 So.2d 896 (Fla. 5th DCA 1986)

3,4

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 Petitioner,)
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LARRY TEAGUE,)
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 Respondent.)

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CASE NO. 69,034

RESPONDENT'S BRIEF ON JURISDICTION

STATEMENT OF THE CASE AND FACTS

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

SUMMARY OF ARGUMENT

Where a case is currently pending before the Supreme Court and a District Court of Appeal subsequently issues an opinion in another case expressly basing its decision on the prior decision currently pending before the Supreme Court, the Supreme Court has jurisdiction to accept the subsequent decision for resolution. This is necessary to maintain uniformity of decisions.

POINT ON APPEAL

THIS HONORABLE COURT MAY EXERCISE ITS DISCRETIONARY JURISDICTION TO REVIEW THE INSTANT CASE WHERE THE DECISION CITES AS CONTROLLING AUTHORITY A FORMER DECISION WHICH IS CURRENTLY PENDING BEFORE THIS COURT.

In the instant case, the District Court reversed a guideline departure sentence where the sole reason given for departure was the trial court's determination that Respondent was an habitual offender. The District Court based its decision on their previous decision in Vicknair v. State, 483 So.2d 896 (Fla. 5th DCA 1986) wherein the Court certified the following question as one of great public importance:

Is the determination of a defendant as an habitual offender pursuant to section 775.084, Florida Statutes, a permissible reason to depart from a recommended guideline sentence where the sole factual basis for the habitual offender determination is the defendant's criminal record and current conviction which have already been weighed in arriving at the guideline sentence, or when the factual basis for the habitual offender determination, other than the defendant's criminal record, is not a clear and convincing reason for departure under guideline sentencing criteria?

On April 1, 1986, Notice to Invoke Discretionary Review was filed and the Vicknair case is currently pending resolution by this Honorable Court in State v. Vicknair, Case No. 68,536.

Respondent agrees that the instant case is directly controlled by Vicknair. As such, this Honorable Court may properly exercise its discretionary jurisdiction to review the instant case. Jollie v. State, 405 So.2d 418 (Fla. 1981).

CONCLUSION

Based on the reasons and authority cited herein, Respondent submits that this Honorable Court may properly exercise its discretionary jurisdiction to accept the instant case for review.

Respectfully submitted,

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

Michael S. Becker

MICHAEL S. BECKER
ASSISTANT PUBLIC DEFENDER
112 Orange Ave., Ste. A
Daytona Beach, FL 32014
(904) 252-3367

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been hand delivered to: The Honorable Jim Smith, 125 N. Ridgewood Ave., Daytona Beach, FL 32014 via his basket at the Fifth District Court of Appeal and mailed to: Mr. Larry Teague, Inmate No. 036180, P. O. Box 221, Raiford, FL 32083 on this 25th day of July, 1986.

Michael S. Becker

MICHAEL S. BECKER
ASSISTANT PUBLIC DEFENDER