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PRELIMINARY STATEMENT

Petitioner was the Appellee and the prosecution, and Respondent was Appellant and the defendant in the Criminal Division of the Seventeenth Judicial Circuit, in and for Broward County, Florida. In the brief, the parties will be referred to as they appear before this Honorable Court of Appeal.

The following symbols will be used:

"R" Record on Appeal.

STATEMENT OF THE CASE AND FACTS

Respondent observes that the only facts properly before this Court are those contained in the district court's decision below, which is reproduced in full, as follows:

The opinion filed on August 7, 1985, is withdrawn and the following substituted therefor:

The petition for writ of certiorari is denied upon authority of Jones v. State, 477 So.2d 566 (Fla. 1985). See also R.L.B. v. State, 11 F.L.W. 174 (Fla. April 17, 1986); State v. Smulowitz, 10 F.L.W. 1786 (Fla.3d DCA July 3, 1985).

We recognize that our decision conflicts with State v. Wilson, 483 So.2d 23 (Fla.2d DCA 1985).

Denied.

SUMMARY OF THE ARGUMENT

Although conflict with another case was recognized by the district court below, the instant case presents no issue which has not already been decided by this Court, which should therefore decline to exercise its discretionary jurisdiction.

ARGUMENT

POINT INVOLVED

THIS COURT SHOULD DECLINE TO EXERCISE ITS
DISCRETIONARY JURISDICTION IN THE PRESENT
CASE.

Although the opinion of the district court in the present case recognized that its decision conflicted with the decision of the Second District Court of Appeal in State v. Wilson, 483 So.2d 23 (Fla.2d DCA 1985), that does not end the inquiry as to whether this Court should exercise its discretion to grant review. This Court's power to exercise its jurisdiction over conflicting district court of appeal cases is, after all, discretionary. Article V, §3(b)(3), Florida Constitution. In Jones v. State, 477 So.2d 566 (Fla. 1985), this Court has already decided the precise issue presented by the State for consideration here. Moreover, this Court has the vehicle for re-asserting the validity of Jones, should it be necessary, in Wilson v. State, Case No. 68,369, where the correctness or incorrectness of State v. Wilson, supra, has been brought to this Court by way of the lower court's certified question. Finally, the district court has not suggested in its opinion - nor could it do so under the facts of this case¹ - that the trial court's order departed from the essential requirements of the law. Such a finding is

¹ Petitioner's Appendix is improper and should be stricken, since it includes many documents not pertinent to consideration of the only real issue at this stage of the proceeding, namely, whether or not this Court should exercise its review powers in this case. Thus, Fla.R.App.P. 9.120(d) specifically limits the appendix to be filed with the jurisdictional brief to "a conformed copy of the decision of the district court of appeal."

necessary before a trial court's pretrial, nonfinal order may be reviewed via common law certiorari. See, Jones v. State, supra, concurring opinion of Justice Boyd. Absent such a finding, even the State's fallback position that the district court could review by certiorari the trial court's order in the instant case has no legal basis. Any decision by this Court as to the availability to the State of interlocutory review in the abstract would be of purely academic interest in the present case, where there has been no finding that the trial court departed from the essential requirements of the law.


Consequently, since this cause presents no unique, pressing, or ripe issues for review, this Court should decline to exercise its discretionary jurisdiction.

CONCLUSION

Based on the foregoing argument and the authorities cited, Respondent respectfully suggests that discretionary review of the decision below be DENIED.

Respectfully submitted,

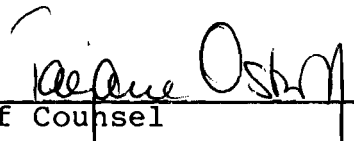
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy hereof has been furnished by courier to RICHARD BARTMON, Assistant Attorney General, Room 204 Elisha Newton Dimick Building, 111 Georgia Avenue, West Palm Beach, FL 33401, this 18 day of August, 1986.



Of Counsel