

IN THE SUPREME COURT OF FLORIDA

CHARLES LEE ANTHONY, JR.

Petitioner,

v.

CASE NO. 70,864

STATE OF FLORIDA,

Respondent.

FILED

JUL 20 1987

CLERK SUPREME COURT

By _____ Deputy Clerk

ON APPEAL FROM THE CIRCUIT COURT
OF THE FIRST JUDICIAL CIRCUIT
IN AND FOR ESCAMBIA COUNTY, FLORIDA

PETITIONER'S BRIEF ON JURISDICTION

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PETITIONER'S BRIEF ON JURISDICTION

I PRELIMINARY STATEMENT

Petitioner, as addressed in this brief, was the defendant in the trial court and the appellant before the First District Court of Appeal. Respondent, the State of Florida, was the prosecuting authority in the trial court and the appellee before the First District. All references will be to the appendix, designated by the symbol "A," and followed by the appropriate page number.

II STATEMENT OF THE CASE AND FACTS

Petitioner was convicted of shooting into an occupied vehicle, a second degree felony. The guidelines called for any non-state prison sanction but the trial judge imposed ten years. The First District Court of Appeal disapproved one of the two reasons for departure. Because the trial judge used the boiler plate language that if any one of the reasons were approved, the sentence would be the same, the District Court approved the departure, citing Griffis v. State, 497 So.2d 296 (Fla. 1st DCA 1986). [A-1].

Petitioner moved for rehearing, citing the fact that Griffis was pending before this court on a certified question (A 2-3). The Court denied rehearing. (A-4).

Subsequently this Court rendered an opinion in Griffis v. State, No. 69,800 (July 16, 1987), quashing the District Court.

Petitioner filed a timely notice to invoke discretionary jurisdiction.

III ARGUMENT

ISSUE PRESENTED

THIS COURT SHOULD ACCEPT JURISDICTION BECAUSE THE FIRST DISTRICT COURT OF APPEAL'S DECISION IN ANTHONY V. STATE, 12 FLW 1329 (FLA. 1ST DCA MAY 27, 1987) EXPRESSLY AND DIRECTLY CONFLICTS WITH THIS COURT'S OPINION IN GRIFFIS V. STATE, NO. 69,800 (JULY 16, 1987).

The First District relied upon Griffis v. State, 497 So.2d 296 (Fla. 1st DCA 1986) in affirming petitioner's sentence. This court recently quashed the First District in Griffis v. State, No. 69,800 (July 16, 1987).

Because the First District's opinion expressly and directly conflicts with this Court's opinion that boiler plate language does not satisfy the Albritton v. State, 476 So.2d 158 (Fla. 1985) standard, this Court should accept jurisdiction.

IV CONCLUSION

Petitioner submits that this Court should accept jurisdiction in this cause and quash the decision of the First District Court of Appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by hand-delivery to Greg Costas, Assistant Attorney General, The Capitol, Tallahassee, Florida and mailed to petitioner on this 29th day of July, 1987.



ANN COCHEU