

IN THE SUPREME COURT OF FLORIDA

MELISSA HENRIQUEZ,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

NOV 12 1985
CLERK OF SUPREME COURT
By _____
Case No. _____
Appeal No. 85-2804

RESPONDENT BRIEF ON JURISDICTION

APPEAL FROM THE CIRCUIT COURT
IN THE TENTH JUDICIAL CIRCUIT
FOR HIGHLANDS COUNTY, FLORIDA

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SUMMARY OF THE ARGUMENT

Respondent joins petitioner in requesting this Court grant discretionary review of Henriquez v. State, ___ So.2d ___ (Fla. 2d DCA 1987)[12 F.L.W. 2224] based on the express and direct conflict with the holding in Outar v. State, 508 So.2d 1311 (Fla. 5th DCA 1987).

ARGUMENT

THE DECISION OF THE SECOND DISTRICT COURT OF APPEAL IS IN CONFLICT WITH THE DECISION OF THE FIFTH DISTRICT COURT OF APPEAL ON THE IDENTICAL QUESTION OF LAW, AND SUCH CONFLICT WAS EXPRESSLY ACKNOWLEDGED BY THE SECOND DISTRICT COURT IN ITS OPINION

The respondent joins with the petitioner in requesting this Court to accept jurisdiction in this case. The Second District Court of Appeal has expressly recognized conflict and this is an important issue, the outcome of which will affect basic procedure in Florida courts. Express and direct conflict between opinions of different District Courts of Appeal provide the basis for the discretionary review of this Court. Rule 9.330, (a)(2)(iv), Fla. R. App.Pro.

In so far as petitioner's brief addresses the merits of case, respondent does not join the petitioner, but will discuss the merits of the case when the briefs on the merits are submitted.

CONCLUSION

Based on the existence of conflict, respondent respectfully requests this Court to accept jurisdiction of this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to D. P. Chanco, Assistant Public Defender, P.O. Box 9000 - Drawer PD, Bartow, Florida 33830 on this 9th day of November, 1987.

Lauren Hafner Sewell
Of Counsel for Respondent