

IN THE SUPREME COURT OF FLORIDA

EDWARD PAUL PETERS,
Petitioner,
v.
STATE OF FLORIDA,
Respondent.

CASE NO. 71-609

FILED
SOLICITOR
JAN 11 1988
CLERK, SUPREME COURT
By _____
Deputy Clerk

DISCRETIONARY REVIEW OF DECISION OF THE
DISTRICT COURT OF APPEAL, SECOND DISTRICT OF FLORIDA

RESPONDENT'S BRIEF ON JURISDICTION

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

CANDANCE M. SUNDERLAND
Assistant Attorney General
1313 Tampa Street, Suite 804
Park Trammell Building
Tampa, Florida 33602
(813) 272-2670

COUNSEL FOR RESPONDENT

/jmw

TABLE OF CONTENTS

| | <u>PAGE NO.</u> |
|---|-----------------|
| SUMMARY OF THE ARGUMENT | 1 |
| ARGUMENT | 2 |
| ISSUE | 2 |
| WHETHER THE DISTRICT COURT'S DECISION EXPRESSLY AND DIRECTLY CONFLICTS WITH <u>GREEN V. STATE</u> , [12 F.L.W. 2422] (FLA. 4th DCA OCT. 14, 1987) | |
| CONCLUSION | 4 |
| CERTIFICATE OF SERVICE | 4 |

TABLE OF CITATIONS

| | <u>PAGE NO.</u> |
|--|-----------------|
| <u>Hendrix v. State,</u> 475 So.2d 1218 (Fla. 1985) | 3 |
| <u>Jenkins v. State,</u> 385 So.2d 1356 (Fla. 1980) | 2 |

OTHER AUTHORITIES

| | |
|--|---|
| Webster's Third New International Dictionary (1961 ed. unabridged.) | 2 |
| Art. V. §3(b)(3), Fla. Constitution | 2 |

SUMMARY OF THE ARGUMENT

In order to have an express and direct conflict, the majority opinion in the case in which certiorari jurisdiction is sought must refer to the decision alleged to be in conflict on the same question of law. There is absolutely no reference to Green v. State, [12 F.L.W. 2422] (Fla. 4 DCA 1987) or Hendrix v. State, 475 So.2d 1218 (Fla. 1985) in the instant opinion.

Petitioner has failed to show a conflict upon which jurisdiction can be had. Art. V. §3(b)(3), Florida Constitution.

ARGUMENT

ISSUE

WHETHER THE DISTRICT COURT'S DECISION EXPRESSLY AND DIRECTLY CONFLICTS WITH GREEN V. STATE, [12 F.L.W. 2422] (FLA. 4th DCA OCT. 14, 1987)

Florida Constitution was amended in 1980 to provide that this Court "[m]ay review any decision of a district court of appeal . . . that expressly and directly conflicts with a decision of another district court of appeal or of the Supreme Court on the same question of law." Art. V. §3(b)(3), Fla. Const. In discussing the amendment, this Court relied on the definitions of "express" and "expressly" contained in Webster's Third New International Dictionary (1961 ed. unabr.). Jenkins v. State, 385 So.2d 1356 (Fla. 1980). "Express" is defined as "to represent in words"; "to give expression to." "Expressly" is defined as "in an express manner." Id. at 1359.

Thus, in order to have an express and direct conflict, the majority opinion in the case in which certiorari jurisdiction is sought must refer to the decision alleged to be in conflict on the same question of law.¹ There is absolutely no reference to

1/ State v. Whifield, 487 So.2d 1045 (Fla. 1986); State v. Jackson, 478 So.2d 1054 (Fla. 1985); Santiago v. State, 478 So.2d 47 (Fla. 1985); Hendrix v. State, 475 So.2d 1218 (Fla. 1985); Waldon v. State, 483 So.2d 101 (Fla. 5th DCA 1986); Torrey v. State, 482 So.2d 552 (Fla. 2d DCA 1986); White v. State, 489 So.2d 115 (Fla. 1st DCA 1986); Kolbe v. State, 480 So.2d 694 (Fla. 4th DCA 1985); Gann v. State, 459 So.2d 1175 (Fla. 5th DCA

Green v. State, [12 F.L.W. 2422] (Fla. 4 DCA 1987) or Hendrix v. State, 475 So.2d 1218 (Fla. 1985) in the instant opinion.

Petitioner has failed to show a conflict upon which jurisdiction can be had. Art. V, §3(b)(3), Florida Constitution.

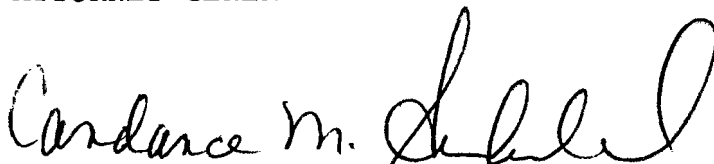
1984); Gallagher v. State, 476 So.2d 754 (Fla. 5th DCA 1985); Schmitt v. State, 458 So.2d 1183 (Fla. 5th DCA 1984); State v. Meyer, 430 So.2d 440 (Fla. 1983).

CONCLUSION

Based upon the foregoing argument and citations to authorities, Petitioner's petition for review should be denied.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL



CANDANCE M. SUNDERLAND
Assistant Attorney General
1313 Tampa Street, Suite 804
Park Trammell Building
Tampa, Florida 33602
(813) 272-2670

COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Stephen Krosschell, Assistant Public Defender, P.O. Box 9000-Drawer PD, Bartow, Florida 33803 on this 7 day of January, 1988.



OF COUNSEL FOR RESPONDENT