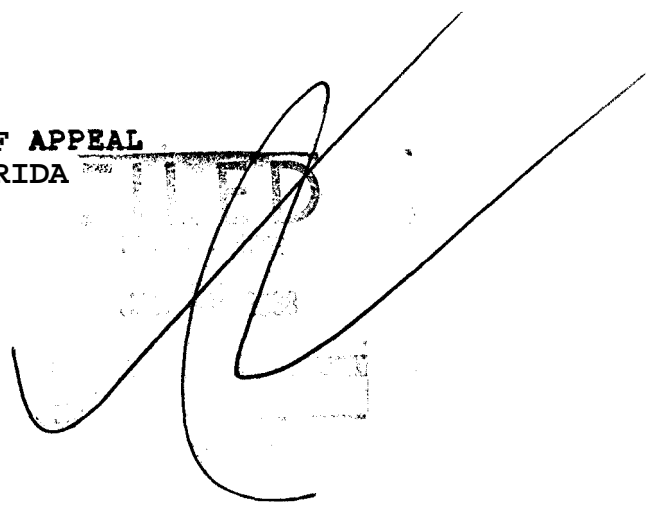


IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA
FIFTH DISTRICT



ROY LEE HULLINGER,

Petitioner/Appellant,

vs

Appeal Number 87-1073

RYDER TRUCK RENTAL, INC.,
a Florida corporation,

Respondent/Appellee.

APPEAL FROM THE DISTRICT COURT
OF APPEAL OF THE STATE OF FLORIDA, FIFTH DISTRICT

PETITIONER'S BRIEF ON JURISDICTION

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TABLE OF CONTENTS

Table of Citations	ii
Statement of Case and Facts.....	1
Summary of Argument	2
Argument	
Issues: I. The Supreme Court should exercise its discretionary jurisdiction over this case.....	4
Conclusion... ..	7
Appendix.....	8
Index.....	9
Certificate of Service.. ..	10

CITATIONS OF AUTHORITY

Forehand v. International Business Machines Corporation.
586 F.Supp.9 (M.D. Fla. 1984)..... 2.4

Hullinger v. Ryder Truck Rental. Inc.,
..... 2.3.4.5.
6,7

Newberger v. United States Marshalls Service.
751 F.2d 1162 (11th Cir. 1985)..... 2.4. 5

Otis Elevator Company v. Scott.
503 So.2d 941 (Fla. 4th DCA 1987)..... 6.

Scott v. Otis Elevator Company.
Case Number 70394. Supreme Court Fla..... 2.4.6. 7

Van Dusen v. Southeast First National Bank of Miami.
478 So.2d 82 (Fla. 3d DCA 1985)..... 2.5

Other Authority

Florida Statute 95.11(3)(f) 1.4.5. 6

Florida Statute 95.11(3)(o) 1.4. 6

Florida Statute 95.11(4)(c) 1.4

Florida Statute 760.10..... 1.5

Florida Statute 733.609 5

F.R.App.P. 9.030(a)(2)(iv) 4

STATEMENT OF THE CASE AND FACTS

On January 16, 1987, Petitioner, Hullinger, filed a Complaint against Ryder Truck Rental, Inc., alleging Ryder had directly violated F.S. 760.10. On May 6, 1987, the Trial Court dismissed the Complaint based on the conclusion that the Statute of Limitations had run. On December 24, 1987, the Fifth District Court of Appeals rendered its opinion stating the applicable Statute of Limitations on age discrimination claims brought for alleged violations of F.S. 760.10 was 2 years under F.S.

95.11(4)(c) for actions to recover wages or overtime or damages or penalties concerning payment of wages or overtime, and not four years under F.S. 95.11(3)(f) for actions founded upon a statutory liability or in the alternative under F.S. 95.11(3)(o) for actions to recover for intentional torts.

On January 19, 1988, Hullinger filed a Motion to Certify Opinion to the Fifth District Court of Appeals and filed his Amended Notice to Invoke the Discretionary Jurisdiction of the Supreme Court.

ARGUMENT

THE SUPREME COURT SHOULD EXERCISE ITS DISCRETIONARY JURISDICTION OVER THIS CASE.

This Honorable Court is presently considering the case of Scott v. Otis Elevator Company, bearing Case Number 70394, which addresses the same exact issues as Hullinger v. Ryder Truck Rental, Inc. Scott v. Otis Elevator and Hullinger v. Ryder each address the question of whether F.S. 95.11(4)(c) or F.S. 95.11(3)(f) or (o) should apply to actions for wrongful discharge alleging statutory violations where each seeks as an element of damages, past and future wages. Should this Court hold that either F.S. 95.11(3)(f) or F.S. 95.11(3)(o) applies to cases which allege a statutory liability or an intentional tort, then the opinion of the Fifth DCA would expressly and directly conflict with the opinion of the Supreme Court. Jurisdiction would then be appropriate under F.R.App.P. 9.030(a)(2)(iv). Additionally, Newberger v. United States Marshalls Service, 751 F.2d 1162 (11th Cir. 1985) and Forehand v. International Business Machines Corporation, 586 F.Supp.9 (M.D. Fla. 1984) both applied a four year Statute of Limitations to claims arising from wrongful discharge and are in direct conflict with the decision of the Fifth District Court of Appeals. Forehand v. International Business Machines Corporation specifically applied F.S. 95.11(3)(f) to a claim by Forehand for alleged discriminatory acts of her employer which were based upon alleged statutory

violations. Thus the Court reached an opinion which is in direct conflict with Hullinger v. Ryder. In Newberger, the Eleventh Circuit Court of Appeals applied F.S. 95.11(3)(f) to alleged intentional actions in forcing the termination of an employee even though the claim involved damages of lost wages. This opinion also expressly conflicts with Hullinger v. Ryder.

The law with regard to which Statute of Limitations should apply in cases alleging wrongful discharge is not clear. There are three specific Statutes of Limitation which could all equally apply to all cases alleging wrongful discharge and violation of a specific state statute. It is a matter of great public importance that this Honorable Court answer the question as to how to apply these three equally applicable Statute of Limitations to causes of actions which involve allegations of statutory violation, intentional actions and recovery of lost wages in a wrongful termination suit. The issue boils down to whether the Statute of Limitations is governed by the alleged cause of action or the damages sought, and an opinion from this Court would settle this confusing issue for both the judicial system and the citizens of Florida.


The opinion of the Third DCA in Van Dusen v. Southeast First National Bank of Miami, 478 So.2d 82 (Fla. 3d DCA 1985) is also in conflict with Hullinger v. Ryder in that Van Dusen applied the four year Statute of Limitations under F.S. 95.11(3)(f) for a statutory violation involving a breach of F.S. 733.609. Therefore the application by the Fifth District in Hullinger of a 2 year Statute of Limitation for a violation of F.S. 760.10 conflicts with the Third District's opinion of applications of F.S. 95.11(3)(f).

These exact issues were certified to this Court by the Fourth District in Otis Elevator Company v. Scott, 503 So.2d 941 (Fla. 4th DCA, 1987) as passing upon a question of great public importance. This Court recently held oral argument on Scott v. Otis Elevator Company, Case Number 70394. Scott v. Otis Elevator Company, stands to directly and expressly conflict with Hullinger v. Ryder based upon this Court's ruling as to the applicability of F.S. 95.11(3)(f) or (o) to cases involving wrongful discharge and allegations of statutory violations. It is of great public importance for this Court to accept jurisdiction of this case and decide whether a wrongful termination of employment based upon a specific statutory liability should carry a four or two year Statute of Limitations.

CONCLUSION

Based upon the certified question in Scott v. Otis Elevator Company, Case Number 70394, the identity of issues with Hullinger v. Ryder and the conflict of opinions as to which Statute of Limitations to apply, this Court should accept jurisdiction of this case.


Respectfully submitted,



Glen D. Wieland, Esquire

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the
Petitioner's Brief on Jurisdiction has been furnished to Anne C.
Conway, Esquire, Post Office Box 1171, Orlando, Florida 32802, by
U.S. Mail Delivery, this 22nd day of July, 1988.



Glen D. Wieland, Esquire