

IN THE SUPREME COUR OF FLORIDA

JOSEPH L. WISE,

Petitioner,

v.

CASE NO. 72,915

STATE OF FLORIDA,

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

BRIEF OF RESPONDENT ON JURISDICTION

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/jmw

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SUMMARY OF THE ARGUMENT

The court has jurisdiction. The court should decline to exercise it jurisdiction because the same question is already pending in Batie v. State, No. 72,060.

ARGUMENT

THE DECISION OF THE DISTRICT COURT OF APPEAL
IN THIS CASE EXPRESSLY AND DIRECTLY CONFLICTS
WITH THE DECISION OF THE FOURTH DISTRICT OF
APPEAL IN NUSSDORF V. STATE, 495 SO.2D 819
(4TH DCA 1986)

(As stated by Petitioner)

Respondent agrees that the decision below is in jurisdictional conflict with Nussdorf v. State, 495 So.2d 819 (Fla. 1st DCA 1986). Respondent urges the court to exercise its discretion to decline to exercise its jurisdiction in this case. The exact same issue is now pending resolution in this court in Batie v. State, 72,060. If the state prevails there, there would be no reason to upset the decision of the district court. If Batie prevails, then petitioner will be able to return to the circuit court and get a ruling on the merits of his application for post conviction release. Exercising jurisdiction in this case would only unnecessarily clutter this court's docket and call for the duplicative expenditure of resources.

CONCLUSION

WHEREFORE, Respondent asks the court to decline to exercise jurisdiction in this case.

Respectfully submitted,
ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

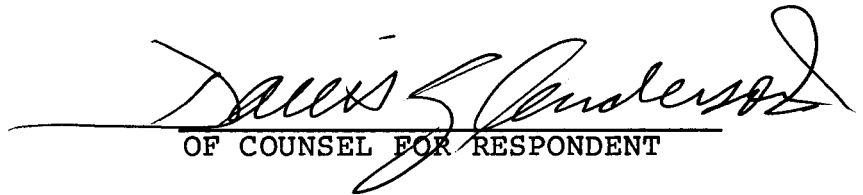


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Peter D. Ringsmuth, P.O. Box 2446, Fort Myers, Florida 33902 on this 13th day of September, 1988.



OF COUNSEL FOR RESPONDENT