

IN THE SUPREME COURT OF FLORIDA

MIGUEL MENDEZ, )  
 )  
 Petitioner, )

vs .

Case No. 73,447

STATE OF FLORIDA, )  
 )  
 Respondent. )

JAN 17 1980  
CLERK OF THE SUPREME COURT  
TALLAHASSEE, FLORIDA

RESPONDENT'S BRIEF ON JURISDICTION

Respectfully submitted,

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STATEMENT OF THE CASE AND FACTS

Respondent accepts Petitioner's Statement of the Case and facts.

SUMMARY OF THE ARGUMENT

The decision of the district court in Mendez v. State, Fla. 4th DCa Case No. 4-86-1210, Nov. 16, 1988, cites as controlling authority a decision that is pending review in this Court, in Case No. 73, 289. That case certified a question of great public importance. State v. Avery, 13 F.L.W. 1816 (Fla. 4th DCA August 3, 1988). This Court has jurisdiction to review this case under Article V, Section 3(b)(4) of the Florida Constitution.

**ISSUE**

THIS COURT HAS JURISDICTION TO REVIEW THE DECISION IN PETITIONER'S CASE BECAUSE THE DISTRICT COURT CITED AS AUTHORITY A DECISION THAT IS PENDING REVIEW IN THIS COURT

**ARGUMENT**

Respondent argues with Petitioner that jurisdiction properly lies in this Court since the District Court cited as controlling authority a case which is pending review in this Court. Jollie v. State, 405 So.2d 418 (Fla. 1981).

Respondent asserts, however, that in the interest of judicial economy this case should travel with Avery v. State, Case No. 73,289. The District Court has already determined that the fact situation sub judice falls within the ambit of State v. Avery, supra. Accordingly, no merit briefs need to be filed in the instant case as **the merit briefs in Avery v. State will control the result of review in this case.**

CONCLUSION

Wherefore, Respondent respectfully requests that this Court accept jurisdiction in this case, consolidate this case with Avery v. State, Case No. 73,289, and allow the merit briefs in Avery v. State to be considered as the merits briefs in the instant case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I CERTIFY that a true copy of the foregoing "Respondent's Brief on Jurisdiction has been furnished by courier to: MARGARET GOOD, ASSISTANT PUBLIC DEFENDER , 9th Floor, Governmental Center, 301 North Olive, West Palm Beach, Florida, 33401, this 17th day of January, 1989.

  
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Of Counsel