

IN THE  
SUPREME COURT OF FLORIDA

FILED  
SID J. WHITE

FEB 10 1988

CLERK, SUPREME COURT

By \_\_\_\_\_ Deputy Clerk

CHARLIE BROWN, JR.,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

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CASE NO. 73,590

JURISDICTIONAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF CITATIONS	ii
PRELIMINARY STATEMENT	1
STATEMENT OF THE CASE AND FACTS	2
SUMMARY OF ARGUMENT	3
ARGUMENT	4
 <u>ISSUE</u>	
THIS COURT SHOULD REFUSE TO ACCEPT REVIEW SINCE THE FIRST DISTRICT'S DECISION IS NOT IN EXPRESS AND DIRECT CONFLICT WITH A DECISION OF ANOTHER DISTRICT COURT OF APPEAL OR OF THIS COURT ON THE SAME QUESTION OF LAW.	
CONCLUSION	7
CERTIFICATE OF SERVICE	7

TABLE OF CITATIONS

<u>CASES</u>	<u>PAGE(S)</u>
<u>Brown v. State,</u> 14 FLW 161 (Fla. 1st DCA, December 21, 1988)	2
<u>Fuller v. State,</u> 488 So.2d 594 (Fla. 2d DCA 1986)	5
<u>Hendrix v. State,</u> 475 So.2d 1218 (Fla. 1985)	4, 5
<u>Hendsbee v. State,</u> 497 So.2d 718 (Fla. 2d DCA 1986)	4
<u>Lee v. State,</u> 486 So.2d 709 (Fla. 5th DCA 1986)	4, 5
<u>Medlock v. State,</u> 489 So.2d 848 (Fla. 5th DCA 1986)	4
<u>Santana v. State,</u> 507 So.2d 680 (Fla. 2d DCA 1987)	5
<u>Scott v. State,</u> 488 So.2d 146 (Fla. 3d DCA 1986)	4
<u>Weir v. State,</u> 490 So.2d 234 (Fla. 4th DCA 1986)	4
<u>Williams v. State,</u> 504 So.2d 392 (Fla. 1987)	6

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PRELIMINARY STATEMENT

Petitioner, Charlie Brown, Jr., Petitioner below, shall be referred to herein as "Petitioner". Respondent, the State of Florida, will be referred to herein as "the State".

STATEMENT OF THE CASE AND FACTS

Petitioner's statement of the case and facts is acceptable to Respondent for the sole purpose of disposition of this cause at the discretionary jurisdiction stage of the proceedings. Respondent would further rely on the facts as set forth in the opinion below of the First District Court of Appeal in Brown v. State, 14 FLW 161 (Fla. 1st DCA December 21, 1988).

### SUMMARY OF ARGUMENT

This Court should deny conflict review as those cases cited by Petitioner in support thereof are not in express and direct conflict with the instant decision. Those cases stand for the general principle that a defendant's lack of respect for the law and the judicial system is an invalid basis for departure from the sentencing guidelines. In the instant case, the trial court supported such a reason with the factual basis that Petitioner failed to comply with his bond release conditions and committed the offenses shortly after his release and, as such, Petitioner exhibited express contempt for the judiciary.

ARGUMENT

ISSUE

THIS COURT SHOULD REFUSE TO ACCEPT REVIEW SINCE THE FIRST DISTRICT'S DECISION IS NOT IN EXPRESS AND DIRECT CONFLICT WITH A DECISION OF ANOTHER DISTRICT COURT OF APPEAL OR OF THIS COURT ON THE SAME QUESTION OF LAW.

Petitioner seeks this Court's discretionary jurisdiction citing conflict with six separate cases:

1. Hendrix v. State, 475 So.2d 1218 (Fla. 1985)
2. Hendsbee v. State, 497 So.2d 718 (Fla. 2d DCA 1986)
3. Scott v. State, 488 So.2d 146 (Fla. 3d DCA 1986)
4. Weir v. State, 490 So.2d 234 (Fla. 4th DCA 1986)
5. Medlock v. State, 489 So.2d 848 (Fla. 5th DCA 1986)
6. Lee v. State, 486 So.2d 709 (Fla. 5th DCA 1986)

The State emphatically disagrees.

In Hendrix, this Court made no mention whatsoever of the departure reason, lack of regard for the law and the judiciary, which was upheld as valid by the lower court. Rather, Hendrix stands for the proposition that a defendant's record of prior convictions could not be used as a basis for departure under the sentencing guidelines, where the prior record had been used in arriving at a point total for the presumptive sentence range. Id. at 1220. Petitioner attempts to stretch that holding to

coincide with lack of regard for the law and the judicial system as an invalid basis for departure. He "suggests" (Brief at 7) conflict with Hendrix based on the Fifth District's decision in Lee, supra, which also relied on Hendrix to invalidate the same departure reason. Respondent submits that the reliance thereon is totally misplaced.

The District Court decisions cited by Petitioner as conflict with the instant decision all held generally that a defendant's disregard for the criminal justice system may not be used to depart from the sentencing guidelines. In those cases, the trial court did not offer any further factual basis to support such a reason for departure. However, the First District on the other hand found that "there is an adequate factual basis for this departure ground". 14 FLW at 161. Specifically, the court ruled that Petitioner's failure to comply with conditions of bond release coupled with the offenses committed shortly after his release demonstrates a contempt for the judicial system. This express contempt based on the timing of the offenses did not exist in the alleged conflict cases and, therefore, significantly distinguishes the instant case therefrom. Apparently, the Second District agrees. See Fuller v. State, 488 So.2d 594 (Fla. 2d DCA 1986) (a lack of regard for the law and judicial system based on defendant's resistance to rehabilitation is a valid basis for departure) and Santana v. State, 507 So.2d 680 (Fla. 2d DCA 1987) (lack of respect for the law and judicial system is a valid

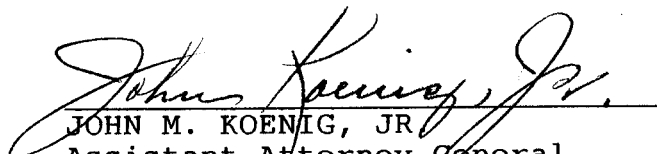
departure reason as it was based on defendant's failure to appear for disposition of a delivery of cocaine violation, and his commission of several offenses one day after he was scheduled to appear). Unlike those cases cited by Petitioner in support of his conflict argument, the trial court's departure reason in the instant case is something substantially more than a mere reference to Petitioner's lack of regard for the law and the judiciary. See Williams v. State, 504 So.2d 392 (Fla. 1987).

CONCLUSION

There being no express and direct conflict with any case cited by Petitioner, the State respectfully requests this Honorable Court deny the petition for review filed in this cause.

Respectfully submitted,

ROBERT A. BUTTERWORTH  
ATTORNEY GENERAL

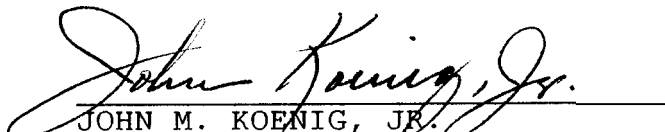
  
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COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been forwarded via U. S. Mail to Neal L. Betancourt, Esquire, 221 E. Church Street, Jacksonville, Florida 32202, this 10th day of February, 1989.

  
JOHN M. KOENIG, JR.  
Assistant Attorney General