


**FILED**

SID J. WHITE

JUN 15 1989

CLERK, SUPREME COURT

By   
Deputy Clerk

IN THE FLORIDA SUPREME COURT

STATE OF FLORIDA,  
Petitioner,

vs.

Case No. 74,294

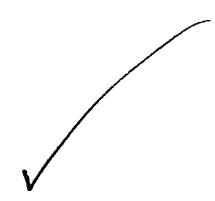
CHESTER T. BYERS,  
Respondent.

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

BRIEF OF PETITIONER ON JURISDICTION

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PRELIMINARY STATEMENT

The State of Florida was the plaintiff in the Circuit Court for the Thirteenth Judicial Circuit in and for Hillsborough County, Florida, and was the Appellant in the Second District Court of Appeal. The State is the Petitioner in this Court and will be referred to as "State" or "Petitioner" in this brief. The Respondent, Chester T. Byers, was the defendant in the trial court and the appellee before the Second District. He will be referred to as "Defendant" or "Respondent" in this brief. The opinion of the Second District rendered in this case on May 19, 1989 is attached to this jurisdictional brief as Appendix A.

STATEMENT OF THE CASE AND FACTS

The State seeks discretionary review of a decision by the Second District Court of Appeal rendered on May 19, 1989 in a criminal case. The State appealed the trial court's downward departure from the sentencing guidelines in eight (8) cases involving this defendant. The Second District determined the State's notices of appeal were untimely and dismissed the appeals. State v. Byers, 14 F.L.W. 1236 (Fla. 2d DCA, Opinion filed May 19, 1989).

On August 5, 1988 the trial court signed and filed a judgment and order placing the defendant on various terms of probation in eight cases (Case Nos. 88-02488, 88-02489, 88-02490, 88-02491, 88-02492, 88-02494, 88-02495 and 88-02496). The probation represents a downward departure from the sentencing guidelines recommended range. The State filed a notice of appeal on August 24, 1988. The trial court entered it's order supporting the downward departure on September 9, 1988. The State filed an amended notice of appeal on September 22, 1988.

Pursuant to a Motion to Determine Jurisdiction filed by the State, the Second District held the notice of appeals were untimely as not being filed within 15 days of the rendering of the judgments and sentences. The court acknowledged its decision was in conflict with that of the Third District in State v. Williams, 463 So.2d 525 (Fla. 3d DCA 1985).

A notice to invoke the discretionary jurisdiction of this Court was timely filed by the State.

SUMMARY OF THE ARGUMENT

In the opinion of the Second District in this case, State v. Byers, 14 F.L.W. 1236 (Fla. 2d DCA, Opinion filed May 19, 1989), the court stated "As in Hieber and Ealy, we acknowledge that our decision is in conflict with State v. Williams, 463 So.2d 535 (Fla. 3d DCA 1985)." The State therefore requests this Court exercise its discretionary jurisdiction to review this case since there has been acknowledged conflict with a decision of another district court on the same issue of law. This Court has already accepted jurisdiction in State v. Hieber, Case No. 73,531.

### ARGUMENT

THIS COURT SHOULD EXERCISE ITS DISCRETIONARY JURISDICTION TO REVIEW THE DECISION OF THE SECOND DISTRICT COURT OF APPEAL IN STATE V. BYERS, 14 F.L.W. 1236 (Fla. 2d DCA, Opinion filed May 19, 1989) WHICH EXPRESSLY AND DIRECTLY CONFLICTS WITH STATE V. WILLIAMS, 463 So.2d 525 (Fla. 3d DCA 1985)

As the Second District Court of Appeal acknowledged in its opinion, the dismissal of the State's appeals in the instant case on the ground that the State's notices of appeal were untimely is in conflict with State v. Williams, 463 So.2d 525 (Fla. 3d DCA 1985).

In State v. Williams, supra., the Third District held that the State's notice of appeal was timely filed where it was filed within fifteen (15) days of the trial court's written order setting forth the reasons for departure from the sentencing guidelines. In doing so, the Third District noted that "[T]he essence of an appeal under Rule 9.140(c)(1)(J) is not that the trial court departed from the guidelines, but rather that the reasons given by the trial court for departing from the guidelines do not justify the departure. Thus, an appeal which precedes the filing of the written statement delineating reasons for departure is premature." 463 So.2d at 525-526.

The Second District held the opposite from the Third District in the opinion on this case and acknowledges there was conflict. The Second District acknowledged a similar conflict in State v. Hieber, 541 So.2d 1208 (Fla. 2d DCA 1988), and this Court has accepted jurisdiction in the Hieber case.

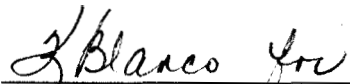
Because the decision of the district court dismissing the state appeals on the ground of untimeliness conflicts with a decision from a another district court on the same issue of law, this Court should exercise its discretionary jurisdiction to resolve this conflict.

CONCLUSION

Based on the foregoing reasons, arguments and citations of authorities, Petitioner requests this Court exercise its discretionary jurisdiction in this cause.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing jurisdictional brief has been furnished by U.S. Mail to Paul C. Helm, Assistant Public Defender, Polk County Courthouse, P.O. Box 9000-Drawer PD, Bartow, Florida 33830, this 13<sup>th</sup> day of June, 1989.

*Z. Blawie*  
Of Counsel for Petitioner