

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Appellee/Petitioner,

v.

Case No.

JAMES KERKLIN,

Appellant/Respondent.

*74,811*  
*APP*

FILED  
OCT 20 1999  
*M*

ON DISCRETIONARY REVIEW FROM THE  
SECOND DISTRICT COURT OF APPEAL, STATE OF FLORIDA

**BRIEF OF PETITIONER ON JURISDICTION**

ROBERT A. BUTTERWORTH  
ATTORNEY GENERAL

PEGGY A. QUINCE  
Assistant Attorney General  
Florida Bar Number 261041  
1313 Tampa Street, Suite 804  
Park Trammell Building  
Tampa, Florida 33602  
(813) 272-2670

*✓*

COUNSEL FOR PETITIONER

TABLE OF CONTENTS

	<u>PAGE NO.</u>
PRELIMINARY STATEMENT.....	1
STATEMENT OF THE CASE AND FACTS.....	2
SUMMARY OF THE ARGUMENT.....	3
ARGUMENT.....	4
THIS COURT SHOULD EXERCISE ITS DISCRETIONARY JURISDICTION TO REVIEW THE DECISION OF THE SECOND DISTRICT COURT OF APPEAL IN KERKLIN V. STATE, 14 F.L.W. 1639 (FLA. June 16, 1989)	
CONCLUSION.....	5
CERTIFICATE OF SERVICE.....	5

TABLE OF CITATIONS

	<u>PAGE NO.</u>
<u>Franklin v. State</u> 526 So.2d 159 (Fla. 5th DCA 1988).....	4
<u>Franklin v. State</u> 14 F.L.W. 281 (Fla. June 16, 1989).....	.2
<u>State v. Mills</u> Case No. 73,841.....	1
<del><u>State v. Watts</u></del> Case No. 74,117.....	1
<u>Watts v. State</u> 542 So.2d 425 (Fla. 2d DCA 1989).....	4

OTHER AUTHORITIES

Rule 9.030(a)(2)(A)(iv) Florida Rules of Appellate Procedure.....	3
Section 958.14 Florida Statutes.....	2, 4

PRELIMINARY STATEMENT

The State of Florida was the plaintiff in the Circuit Court for the Tenth Judicial Circuit in and for Highlands County, Florida, and was the Appellee 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, James Kerklín, was the defendant in the trial court and the appellant 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 July 5, 1989, rehearing denied September 13, 1989, is attached to this jurisdictional brief as Appendix A.

This case presents the same issue which is presently before this Court in State v. Mills, Case No. 73,841 and State v. Watts, Case No. 74,117.

STATEMENT OF THE CASE AND FACTS

The State of Florida seeks discretionary review of a decision by the Second District Court of Appeal rendered on July 5, 1989 in a criminal case. The defendant appeal to the district court the sentence he received upon revocation of his probation. The defendant had originally be sentenced as a youthful offender. Upon revocation the trial court did not sentence him under the provisions of Section 958.14, Florida Statutes, rather, respondent was sentence to seven (7) years. The Second District opined a person originally sentenced as a youthful offender must be given youthful offender treatment upon revocation of his probation and/or community control.

A timely motion for rehearing was filed on July 12, 1989. Additionally, a notice of supplemental authority was filed drawing the court's attention to this Court's recent opinion in Franklin v. State, 14 F.L.W. 281 (Fla. June 16, 1989). On September 13, 1989 the district court denied rehearing. A notice to invoke the discretionary jurisdiction of this Court was mailed on September 27, 1989.

SUMMARY OF THE ARGUMENT

The opinion of the Second District Court of Appeal, holding a defendant must be sentenced under the Youthful Offender Statute upon revocation of probation or community control if he/she was originally sentenced as a youthful offender, directly and expressly conflicts with a decision from another district court and this Court on the same issue of law. Therefore, this Court should accept jurisdiction of this case under Rule 9.030(a)(2)(A)(iv), Florida Rules of Appellate Procedure.

## ARGUMENT

THIS COURT SHOULD EXERCISE ITS DISCRETIONARY JURISDICTION TO REVIEW THE DECISION OF THE SECOND DISTRICT COURT OF APPEAL IN KERKLIN V. STATE, 14 F.L.W. 1639 (FLA. 2d DCA, Opinion filed July 5, 1989), WHICH EXPRESSLY AND DIRECTLY CONFLICTS WITH FRANKLIN V. STATE, 526 So.2d 159 (Fla. 5th DCA 1988), *affirmed*, 14 F.L.W. 281 (Fla. June 16, 1989)

The Second District Court of Appeal in Kerklin v. State, *supra*, held a defendant who is originally sentenced as a youthful offender must upon revocation of probation and/or community control be sentenced in accordance with the Youthful Offender Statute, Section 958.14, Florida Statutes. While the court did not certify conflict with Franklin v. State, *supra*, conflict was implicit in the court's statement, "Contra Franklin v. State, 526 So.2d 159 (Fla. 5th DCA 1988)(trial court not required to "reclassify" a defendant as a youthful offender for resentencing upon a violation of probation or community control)."

The Second District in April of this year decided Watts v. State, 542 So.2d 425 (Fla. 2d DCA 1989), in the same manner as the Kerklin decision, a youthful offender must be reclassified as a youthful offender upon revocation of probation or community control. In Watts the court certified conflict with Franklin. The Watts case is now pending in this Court as case number 74,117. Since that time this Court has addressed Franklin, upholding the decision of the district court. It is, therefore, clear that the decision by the district court in Kerklin not only conflicts with the Fifth District Franklin opinion but now also conflicts with this court's opinion affirming Franklin.

CONCLUSION

Since the opinion of the Second District requiring reclassification as a youthful offender upon revocation of probation and/or community control conflicts with an opinion from this Court and the Fifth District, this Court should exercise its discretionary jurisdiction to resolve the conflict.

Respectfully submitted,

ROBERT A. BUTTERWORTH  
ATTORNEY GENERAL

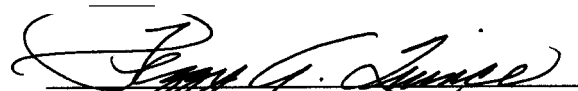


PEGGY A. QUINCE  
Assistant Attorney General  
Florida Bar Number 261041  
1313 Tampa Street, Suite 804  
Park Trammell Building  
Tampa, Florida 33602  
(813) 272-2670

Counsel for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief of Petitioner on Jurisdiction has been furnished by U.S. Mail Kevin Briggs, Assistant Public Defender, Polk County Courthouse, P.O. Box 9000-Drawer PD, Bartow, Florida 33830, this 5th day of October, 1989.

  
Of Counsel for Petitioner