

IN THE SUPREME COURT OF FLORIDA

JAMES KERKLIN,

Respondent,

vs ■

STATE OF FLORIDA,

Petitioner ■

Case No. 74,811

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

BRIEF OF RESPONDENT ON JURISDICTION

JAMES MARION MOORMAN  
~~PUBLIC DEFENDER~~  
TENTH JUDICIAL CIRCUIT  
FLORIDA BAR NO. 0143265

ANDREA STEFFEN  
ASSISTANT PUBLIC DEFENDER

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ATTORNEYS FOR RESPONDENT

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**STATEMENT OF THE CASE AND FACTS**

**Respondent would accept the Statement of the Case and Facts as submitted by Petitioner.**

**SUMMARY OF THE ARGUMENT**

Counsel acknowledges a basis for jurisdiction exists, but urges the court to refrain from review.

ARGUMENT

ISSUE I

THIS COURT SHOULD EXERCISE ITS DISCRETIONARY JURISDICTION TO REVIEW THE DECISION OF THE SECOND DISTRICT COURT OF APPEALS IN KERKLIN V. STATE, 14 F.L.W. 1639 (FLA. June 16, 1989)

Respondent would concede that a basis exists for this court to exercise it's discretionary jurisdiction, yet Respondent urges this court to refrain from doing so.

Respondent respectfully requests this court instead to vacate the stay issued by the Second District Court of Appeals on September 13, 1989. Respondent is confident the decision of the Second District was correct. The stay has kept Mr. Kerklin incarcerated longer than his legal sentence would require. Mr. Kerklin is being irreparably harmed by the stay.


CONCLUSION

Respondent acknowledges a basis for jurisdiction, yet requests this court to decline to accept this case and instead vacate the stay currently in force.

CERTIFICATE OF SERVICE

I certify that a copy has been mailed to Robert Butterworth, Room 804, 1313 Tampa St., Tampa, FL 33602, (813) 272-2670, on this 12 day of October, 1989.

Respectfully submitted,



JAMES MARION MOORMAN  
PUBLIC DEFENDER  
TENTH JUDICIAL CIRCUIT  
FLORIDA BAR NUMBER 0143265

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