

IN THE SUPREME COURT OF FLORIDA

**FILED**  
SID J. WHITE  
JAN 4 1990  
CLERK, SUPREME COURT  
By \_\_\_\_\_  
Deputy Clerk

WILLIE FRED POLLARD,

**Petitioner,**

vs.

CASE NO. 75,223

STATE OF FLORIDA,

Respondent.

RESPONDENT'S BRIEF ON JURISDICTION

ROBERT A. BUTTERWORTH  
ATTORNEY GENERAL

JAMES W. ROGERS  
BUREAU CHIEF  
ASSISTANT ATTORNEY GENERAL  
FLA. BAR #325791

DEPARTMENT OF LEGAL AFFAIRS  
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TALLAHASSEE, FLORIDA 32399-1050  
904/488-0600

COUNSEL FOR RESPONDENT

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STATEMENT OF THE CASE AND FACTS

Respondent agrees with petitioner's statement.

SUMMARY OF ARGUMENT

Because of the brevity of the argument, a summary would not be helpful.

ARGUMENT

ISSUE

DOES JURISDICTION EXIST UNDER JOLLIE V. STATE, 405 SO.2D 418 (FLA. 1981)?

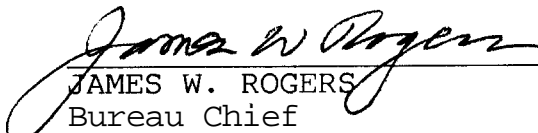
The state agrees that the citation as controlling authority to Wheeler v. State, 549 So.2d 687 (Fla. 1st DCA 1989), which is currently pending before this Court for review, provides jurisdiction under the rationale of Jollie. It should be noted, however, that this case is not actually controlled by Wheeler, which stands for the proposition that dual convictions are not permitted for offenses defined within the same statutory subsection. The case is actually controlled by St. Fabre v. State, 548 So.2d 797 (Fla. 1st DCA 1989) and Porterfield v. State, No. 88-1480 (Fla. 1st DCA Dec. 4, 1989), which stand for the proposition that dual convictions are permitted when, as here, charged offenses are drawn from different statutory subsections. Regardless, both Wheeler and St. Fabre/Porterfield rest on the same analytical foundation: legislative intent is controlled by whether the legislature defines offenses in the same or different statutory subsections. Thus, Wheeler and St. Fabre/Porterfield are Siamese twins, either both stand or neither stand and one cannot stand without the other.

CONCLUSION

Review should be granted.

Respectfully submitted,

ROBERT A. BUTTERWORTH  
ATTORNEY GENERAL

  
\_\_\_\_\_  
JAMES W. ROGERS  
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904/488-0600

COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Carl S. McGinnes, Assistant Public Defender, Leon County Courthouse, Tallahassee, Florida 32301, this 4th day of January, 1990.

  
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JAMES W. ROGERS