

IN THE SUPREME COURT OF THE STATE OF FLORIDA

BILLY WOODS, et al.,

Petitioner,

v.

Case No. 76,163

STATE OF FLORIDA,

Respondent.

FILED
JUN 27 1990

FLORIDA SUPREME COURT
JUN 27 1990

RESPONDENT'S BRIEF ON JURISDICTION

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

BELLE B. TURNER
ASSISTANT ATTORNEY GENERAL
FLORIDA BAR NO. 397024
210 N. Palmetto Avenue
Suite 447
Daytona Beach, FL 32114
(904) 238-4990

COUNSEL FOR RESPONDENT

TABLE OF CONTENTS

	PAGES
TABLE OF AUTHORITIES.....	i
SUMMARY OF ARGUMENT.....	1
ARGUMENT	
WHETHER THIS COURT SHOULD ACCEPT JURISDICTION TO DECIDE AN ISSUE THAT WILL BE DETERMINED IN PENDING CASES.....	2
CONCLUSION.....	4
CERTIFICATE OF SERVICE.....	\$

TABLE OF AUTHORITIES

CASES:

PAGES:

<u>Baker v. State,</u> 518 So.2d 457 (Fla. 5th DCA 1988),.....	2
<u>Fieselman v. State,</u> 537 So.2d 603 (Fla. 3d DCA 1988),.....	2
<u>Jollie v. State,</u> 405 So.2d 418 (Fla. 1981),.....	2
<u>Williams v. State,</u> 540 So.2d 229 (Fla. 5th DCA 1989),.....	2
<u>Woods v. State,</u> 15 F.L.W. D 1351 (Fla. 5th DCA May 17, 1990),.....	2

SUMMARY OF ARGUMENT

Even though the decision below relies upon a case that is pending review in this court, respondents suggest that the interest of justice would not be served by accepting jurisdiction in this case.

ARGUMENT

WHETHER THIS COURT SHOULD ACCEPT
JURISDICTION TO DECIDE AN ISSUE
THAT WILL BE DETERMINED IN OTHER
PENDING CASES

The District Court of Appeal, Fifth District, declined to issue a petition for writ of certiorari to review a decision of the Circuit Court sitting in its appellate capacity. The opinion states, "We decline to grant the writ for the reasons stated in Williams v. State, 540 So.2d 229 (Fla. 5th DCA 1989), and Baker v. State, 518 So.2d 457 (Fla. 5th DCA 1988). The defendants have an adequate remedy by plenary appeal if the trial court enters a judgment of conviction." Woods v. State, 15 F.L.W. D 1351 (Fla. 5th DCA May 17, 1990). Williams certified conflict with decisions from other district courts of appeal.

Williams was accepted for review by this court (pending case number 73,948), and consolidated with Fieselman v. State, 537 So.2d 603 (Fla. 3d DCA 1988), pending case number 73,636. This court entertained oral argument in these cases on October 4, 1989. As of this writing, the case is still pending.

Relying on Jollie v. State, 405 So.2d 418 (Fla. 1981), Woods contends that this court should accept jurisdiction and consolidate this case with Williams and Fieselman. In Jollie this Court held that a "citation PCA" which refers to a decision that is either pending review in or has been reversed by this Court is prima facie express conflict and allows this Court to exercise its jurisdiction. The state acknowledges that this

Court may exercise its jurisdiction on this basis. Although the decision below is not a "citation PCA", it does expressly rely upon the reasoning of a decision which is pending review in this court.

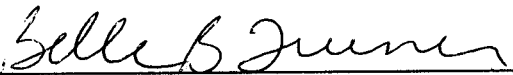
However, respondents nevertheless suggest that review in this case is inappropriate. The decision in Williams is imminent. After full briefing and oral argument, Williams is not in a procedural posture that would be conducive to consolidation. When the decision is rendered, if it is favorable to Woods, he can move the fifth district to withdraw mandate. If the decision is unfavorable to Woods' contention, then he is in the same position that he was before coming to this court. Woods and his codefendants have managed to delay this case for nearly three years and they have not even been convicted yet. The state suggests that the interests of justice would not be served by accepting jurisdiction in this case.

CONCLUSION

Based upon the argument and authority presented, respondent reepectfully requests this honorable court to decline to accept jurisdiction in this case.

Respectfully submitted,

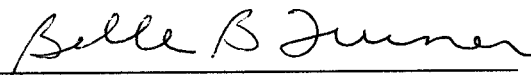
ROBERT A. BUTTERWORTH
ATTORNEY GENERAL


BELLE B. TURNER
ASSISTANT ATTORNEY GENERAL
FLORIDA BAR NO. 397024
210 N. Palmetto Avenue
Suite 447
Daytona Beach, FL 32114
(904) 238-4990

COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing brief has been furnished, by U.S. Mail to Flem K. Whited counsel for petitioner at 630 N. Wild Olive Ave, Suite A, Daytona Beach, Fl 32118, this 26th day of June, 1990.


BELLE B. TURNER
ASSISTANT ATTORNEY GENERAL