

76,331

IN THE SUPREME COURT OF FLORIDA

FILED
SID J. WHITE

CASE NO.

AUG 6 1990

DCA NO. 90-1316

CLERK, SUPREME COURT

By _____
Deputy Clerk

BR

ADOLPH LOTT,

Petitioner,

vs.

THE STATE OF FLORIDA,

Respondent.

ON PETITION FOR DISCRETIONARY REVIEW

BRIEF OF RESPONDENT ON JURISDICTION

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INTRODUCTION

The Petitioner, Adolph Lott, was the Petitioner below. The Respondent, the State of Florida, was the Respondent below. The parties will be referred to as they appear before this Honorable Court. The symbol "App." will be used to refer to portions of the appendix attached to this brief.

STATEMENT OF THE CASE AND FACTS

The Respondent accepts the Petitioner's statement of the case and facts as presented on pages two (2) through three (3) of his jurisdictional brief as a substantially correct representation of the proceedings below. Respondent, however, would add that the opinion issued by the Third District Court of Appeal indicated that Petitioner would be entitled to release on his own recognizance if it were not for the fact that the matter, not the writ, became moot once the information was filed on the fortieth day. (App. 1)

SUMMARY OF THE ARGUMENT

Although the instant opinion is admittedly in conflict with Thomas v. Dyess, 15 FLW D525 (Fla. 2d DCA March 2, 1990), this Court need not exercise its discretionary jurisdiction because the instant opinion expressly agrees with Bowens v. Tyson, 543 So.2d 851 (Fla. 4th DCA 1989), which has recently been presented before this Court on virtually the same issue presented in the instant cause. (Case No. 74,370). Disposition of Bowens v. Tyson will resolve the issues presented in the instant petition, therefore, review of the instant cause is unnecessary.

ARGUMENT

THE THIRD DISTRICT COURT OF
APPEAL'S DECISION IN THIS CASE
DIRECTLY CONFLICTS WITH THE
DECISION IN THOMAS v. DYESS, 15 FLW
D525 (FLA. 2d DCA 1990).

In the instant case, the Third District agreed with the Fourth District's holding in Bowens v. Tyson, 543 So.2d 851 (Fla. 4th DCA 1989) and held that where an information has not been filed within thirty days from the date on which a defendant has been arrested, the issue of whether or not the defendant would have been entitled to release on his own recognizance on the thirtieth day is rendered moot by the filing of the information on or before the fortieth day. (App. 1) In so holding, the Third District rejected the holding of the second District in Thomas v. Dyess, 15 FLW at D525.

This Court, however, need not exercise its discretionary jurisdiction because the question presented in the instant case is one of statutory interpretation essentially asking whether a defendant may be incarcerated after an information has been filed even though he was once arguably entitled release on his own recognizance because of a procedural technicality, and this same question has been presented before this Court in Bowens v. Tyson, this Court should abstain from accepting jurisdiction of this case. By approving of the analysis used in Bowens v. Tyson, this

Court will affirm the result in the instant case and reject the holding in Thomas v. Dyess, therefore, discretionary review is unnecessary.

CONCLUSION

WHEREFORE, based upon the foregoing, Respondent respectfully requests that this Court refuse to exercise its jurisdiction in the instant case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing BRIEF OF RESPONDENT ON JURISDICTION was furnished by mail to ROBERT KALTER, Assistant Public Defender, 1351 N.W. 12th Street, Miami, Florida 33125, on this 3rd day of August, 1990.

Angelica D. Zayas
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Assistant Attorney General

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