

IN THE SUPREME COURT OF FLORIDA

FILED
SID J. WHITE
SEP 21 1990
CLERK SUPREME COURT
BY Deputy Clerk

PEDRO FERNANDEZ,
Petitioner,

v.

Case No. 76,525
2DCA No. 87-1824

STATE OF FLORIDA,
Respondent.

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

BRIEF OF RESPONDENT ON JURISDICTION

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

JOSEPH R. BRYANT
Assistant Attorney General
Florida Bar No. 0561444
2002 North Lois Avenue, Suite 700
Westwood Center
Tampa, Florida 33607-2366
(813) 873-4739

COUNSEL FOR RESPONDENT

/mev

TABLE OF CONTENTS

PAGE NO.

SUMMARY OF THE ARGUMENT.....1

ARGUMENT

ISSUE

WHETHER THE DECISION BY THE SECOND DISTRICT
COURT OF APPEAL IN FERNANDEZ v. STATE, NO.
87-1824 (Fla. 2d DCA July 25, 1990),
CONFLICTS WITH DECISIONS OF THIS COURT AND
OTHER DISTRICT COURTS OF APPEAL?.....2

CONCLUSION.....3

CERTIFICATE OF SERVICE.....3

TABLE OF CITATIONS

PAGE NO.

<u>Adams v. State,</u> 490 So.2d 53 (Fla. 1986).....	2
<u>Lambert v. State,</u> 545 So.2d 838 (Fla. 1989).....	2
<u>Ree v. State,</u> 14 F.L.W. S565 (Fla. Nov. 16, 1989).....	2
<u>State v. Betancourt,</u> 552 So.2d 1107 (Fla. 1989).....	2
<u>State v. Vanhorn,</u> 15 F.L.W. S327 (Fla. May 31, 1990).....	2

SUMMARY OF THE ARGUMENT

This Court should decline Petitioner's request for exercise of discretionary jurisdiction as the instant decision is in harmony with precedent set forth by this Court.

ARGUMENT

ISSUE

WHETHER THE DECISION BY THE SECOND DISTRICT COURT OF APPEAL IN FERNANDEZ v. STATE, NO. 87-1824 (Fla. 2d DCA July 25, 1990), CONFLICTS WITH DECISIONS OF THIS COURT AND OTHER DISTRICT COURTS OF APPEAL?

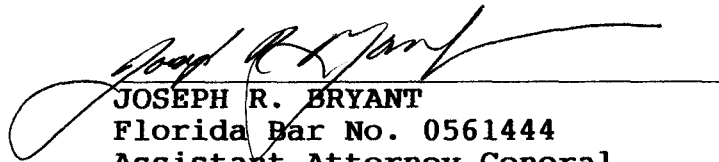
Petitioner contends that the instant decision of the Second District Court of Appeal conflicts with this Court's holding in Ree v. State, 14 F.L.W. S565 (Fla. Nov. 16, 1989), and Lambert v. State, 545 So.2d 838 (Fla. 1989), and he invites this Court to exercise its discretionary jurisdiction. Petitioner's invitation should be declined, as the instant decision is in harmony with current precedent set forth in Adams v. State, 490 So.2d 53 (Fla. 1986); State v. Betancourt, 552 So.2d 1107 (Fla. 1989); and State v. Vanhorn, 15 F.L.W. S327 (Fla. May 31, 1990).

CONCLUSION

Based on the foregoing arguments and citations of authority, the Respondent respectfully requests this Honorable Court to decline jurisdiction.

Respectfully submitted,

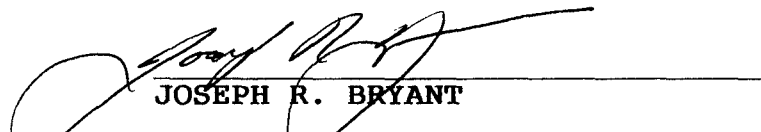
ROBERT A. BUTTERWORTH
ATTORNEY GENERAL


JOSEPH R. BRYANT
Florida Bar No. 0561444
Assistant Attorney General
2002 North Lois Ave., Suite 700
Westwood Center
Tampa, Florida 33607-2366
(813) 873-4739

OF 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 DEBORAH K. BRUECKHEIMER, Assistant Public Defender, Polk County Courthouse, P. O. Box 9000 - Drawer PD, Bartow, Florida 33830, on this 19th day of September, 1990.


JOSEPH R. BRYANT
OF COUNSEL FOR RESPONDENT