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SID J. WHITE

MAR 13 1991

CLERK, SUPREME COURT

By [Signature]
Deputy Clerk

IN THE FLORIDA SUPREME COURT

STATE OF FLORIDA,

Petitioner,

v.

CASE NO. 77,417

RONALD WORLEY,

Respondent.

_____ /

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

JURISDICTIONAL BRIEF OF PETITIONER

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TABLE OF CONTENTS

	<u>PAGE NO.</u>
TABLE OF CITATIONS	ii
STATEMENT OF THE CASE AND FACTS	1
SUMMARY OF THE ARGUMENT	2
ARGUMENT.	3
ISSUE: WHETHER THIS COURT SHOULD EXERCISE ITS DISCRETIONARY JURISDICTION AND REVIEW THE ISSUE PENDING IN THIS CASE WHEN SAID ISSUE IS PRESENTLY PENDING BEFORE THIS COURT IN A SIMILAR CASE.	
CONCLUSION.	4
CERTIFICATE OF SERVICE.	6
APPENDIX.	5

TABLE OF CITATIONS

	<u>PAGE NO.</u>
<u>Carter v. State</u> 15 F.L.W. (D)2911 (Fla. 4th DCA Opinion filed Dec. 5, 1990)	3
<u>Flowers v. State</u> Case number 76,854.....	3
<u>Flowers v. State</u> 567 So.2d 1055 (Fla. 5th DCA 1990).....	2
<u>Jenkins v. State</u> 385 So.2d 1356 (Fla. 1980).....	3
<u>Lewis v. State</u> No. 89-000369 (Fla. 2d DCA Feb. 1, 1991).....	1
<u>Scott v. State</u> No. 90-00359 (Fla. 2d DCA Feb. 1, 1991).....	1
<u>Walker v. State</u> 546 So.2d 764 (Fla. 5th DCA 1990).....	3

OTHER AUTHORITIES

Florida Constitution article V, section 3(b)(3).....	3
Florida Rule of Appellate Procedure 9.030(a)(2)(iv).....	3

STATEMENT OF THE CASE AND FACTS

The statement of the case and facts is adopted from the decision of the Second District Court of Appeal:

Consistent with our decisions in Lewis v. State, No. 89-000369 (Fla. 2d DCA Feb. 1, 1991) and Scott v. State, No. 90-00359 (Fla. 2d DCA Feb. 1, 1991), we hold the trial court erred in multiplying the points for legal constraint by the number of new offenses committed by appellant while on probation to arrive at appellant's presumptive guidelines sentence. Accordingly, we reverse appellant's sentence and remand for corection of the scoresheet and sentencing.

SUMMARY OF THE ARGUMENT

This Court is vested with jurisdiction to review this case based on Article V, section 3(b)(3), of the Florida Constitution. Furthermore, the issue presented is presently pending before this court in Flowers v. State, 567 So.2d 1055 (Fla. 5th DCA 1990). Therefore this Court should accept jurisdiction of this case.

ARGUMENT

ISSUE

THIS COURT SHOULD EXERCISE ITS DISCRETIONARY JURISDICTION AND REVIEW THE ISSUE PENDING IN THIS CASE WHEN SAID ISSUE IS PRESENTLY PENDING BEFORE THIS COURT IN A SIMILAR CASE.

The decision of the Second District Court of Appeal in this matter directly and expressly conflicts with the decision of the Fifth District Court of Appeal in Walker v. State, 546 So.2d 764 (Fla. 5th DCA 1990) and the Fourth District Court of Appeal's decision in Carter v. State, 15 F.L.W. (D)2911 (Fla. 4th DCA Opinion filed Dec. 5, 1990). Pursuant to article V, section 3(b)(3) of the Florida Constitution and Florida Rule of Appellate Procedure 9.030(a)(2)(iv), this Court may review a decision of a district court of appeal that expressly and directly conflicts with a decision of another district court of appeal or the Supreme Court on the same question of law. Jenkins v. State, 385 So.2d 1356 (Fla. 1980).

Furthermore, the issue presented in this appeal is identical to the issue presently pending before this court in Flowers v. State, Case number 76,854. The issue presented is one of great public importance in interpreting Florida Rule of Criminal Procedure 3.701(d)(6), on whether legal status points may be applied for each new offense committed while on probation or community control.

CONCLUSION

Petitioner requests that this Court accept jurisdiction in this matter.

Respectfully submitted,

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APPENDIX

1. Decision of Second District Court of Appeal in Worley v. State, Case No. 90-490 (Fla. 2d DCA, Feb. 1, 1991).
2. Decision of Fifth District Court of Appeal in Walker v. State, 546 So.2d 764 (Fla. 5th DCA 1990)
3. Decision of Fourth District Court of Appeal in Carter v. State, 15 F.L.W.(D)2911 (Fla. 4th DCA, Opinion filed Dec. 5, 1990).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Megan Olsen, Assistant Public Defender, P.O. Box 9000-Drawer PD, Bartow, Florida 33830, on this 11th day of March, 1991.


OF COUNSEL FOR PETITIONER