

047

IN THE SUPREME COURT OF FLORIDA

**FILED**

SID J. WHITE

MAY 30 1994

CLERK, SUPREME COURT

By [Signature]  
Chief Deputy Clerk

TIMOTHY E. TUCKER,  
Petitioner,

v.

CASE NO. 77,854

STATE OF FLORIDA,  
Respondent.

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ON DISCRETIONARY REVIEW FROM THE  
DISTRICT COURT OF APPEAL, FIFTH DISTRICT

RESPONDENT'S JURISDICTIONAL BRIEF

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AUTHORITIES CITED

CASES:

PAGES:

Barber v. State,  
564 So.2d 1169 (Fla. 1st DCA 1990).....2

Gholston v. State,  
16 FLW 46 (Fla. 1st DCA December 17, 1990).....2

Johnson v. State,  
568 So.2d 519 (Fla. 1st DCA 1990).....2

SUMMARY OF ARGUMENT

The respondent agrees with the petitioner that the decision of the district court of appeal for the Fifth District in this case is in express and direct conflict with a decision of the district court for the First District.

## ARGUMENT

THE DISTRICT COURT'S DECISION IS IN  
DIRECT AND EXPRESS CONFLICT WITH A  
DECISION OF ANOTHER DISTRICT COURT  
OF APPEAL.

As the petitioner correctly states in his jurisdictional brief, the decision of the district court of appeal for the Fifth District in this case is in express and direct conflict with the decision of the district court for the First District in Gholston v. State, 16 FLW 46 (Fla. 1st DCA December 17, 1990).<sup>1</sup>

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<sup>1</sup> The petitioner also states, incorrectly, that the decision of the Fifth District court in this case is in direct conflict with the First District's decisions in Johnson v. State, 568 So.2d 519 (Fla. 1st DCA 1990) and Barber v. State, 564 So.2d 1169 (Fla. 1st DCA 1990). Johnson holds that the habitual offender statute does not apply to life felonies; the Fifth District agrees. See Paige v. State, 570 So.2d 1108 (Fla. 5th DCA 1990). The language petitioner refers to in Barber is dictum; the decision in that case is not in actual conflict with the decision of the Fifth District in the present case.

CONCLUSION

The respondent agrees that this court has jurisdiction to review the district court's decision in this matter.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing jurisdictional brief has been furnished by hand delivery to Michael S. Becker, Attorney for Appellant, of 112 Orange Ave., Suite A, Daytona Beach, Florida 32114, at the Public Defender's in-basket at the Fifth District Court of Appeal, this 28<sup>th</sup> day of May, 1991.

  
\_\_\_\_\_  
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