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FILED
SID J. WHITE
JUN 28 1991
CLERK, SUPREME COURT
By _____
Clerk

IN THE SUPREME COURT OF FLORIDA

HENRY TAYLOR,)
)
 Petitioner,)
)
 vs.)
)
 STATE OF FLORIDA,)
)
 Respondent.)
 _____)

CASE NO. 78,133

APPEAL FROM THE CIRCUIT COURT
IN AND FOR BREVARD COUNTY, FLORIDA

JURISDICTIONAL BRIEF OF PETITIONER

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

MICHAEL S. BECKER
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TABLE OF CITATIONS

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CASES CITED:

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567 So.2d 1055 (Fla. 5th DCA 1990)

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Jollie v. State,

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546 So.2d 764 (Fla. 5th DCA 1989)

1

IN THE SUPREME COURT OF FLORIDA

HENRY TAYLOR,)
)
 Petitioner,)
)
 vs.) CASE NO. 78,133
)
 STATE OF FLORIDA,)
)
 Respondent.)
 _____)

PETITIONER'S BRIEF ON JURISDICTION

STATEMENT OF THE CASE AND FACTS

Petitioner, while under legal constraint, committed several other criminal offenses. The Petitioner pled to several of these offenses and when he appeared for sentencing a guidelines scoresheet was prepared in which legal constraint points were assessed for each of the offenses for which the Petitioner was being sentenced.

Petitioner appealed to the Fifth District Court of Appeal and argued that there was no authority for applying a multiplier to the legal constraint points. The Fifth District Court of Appeal affirmed on the authority of Walker v. State, 546 So.2d 764 (Fla. 5th DCA 1989) and Flowers v. State, 567 So.2d 1055 (Fla. 5th DCA 1990), as well as numerous other cases on the same issue.

Petitioner timely filed a notice to invoke discretionary review.

SUMMARY OF ARGUMENT

Where a district court of appeal affirms a case with a citation to another case which is currently pending review before the Florida Supreme Court, this Court automatically has jurisdiction to review the case.

ARGUMENT

THE FLORIDA SUPREME COURT HAS
JURISDICTION TO ACCEPT THE INSTANT CASE
FOR REVIEW WHERE IT WAS AFFIRMED ON THE
AUTHORITY OF A CASE WHICH IS CURRENTLY
PENDING REVIEW BEFORE THIS COURT.

In the case below, the Fifth District Court of Appeal affirmed on the authority of Flowers v. State, 567 So.2d 1055 (Fla. 5th DCA 1990)¹. In Flowers, the Fifth District Court of Appeal certified the following question as being of great public importance:

DO FLORIDA'S UNIFORM SENTENCING
GUIDELINES REQUIRE THAT LEGAL CONSTRAINT
POINTS BE ASSESSED FOR EACH OFFENSE
COMMITTED WHILE UNDER LEGAL CONSTRAINT?

A notice to invoke jurisdiction in the Flowers case was timely filed on October 22, 1990. The case is currently pending before this Honorable Court in Flowers v. State, Case No. 76,854.

In Jollie v. State, 405 So.2d 418 (Fla. 1981) this Court held that a district court of appeal's per curiam opinion which cites as a controlling authority a decision that is pending review in the Supreme Court constitutes prima facie express conflict and allows the Supreme Court to exercise its jurisdiction.

In the instant case, the opinion below was affirmed on the authority of Flowers v. State, a case which is currently pending review before this Court. On the clear authority of Jollie, supra, this Court has jurisdiction to review the instant case.

¹ The Fifth District also affirmed on the authority of numerous other cases which in turn were decided on the basis of Flowers.

CONCLUSION

Based on the foregoing reasons and authorities, Petitioner requests this Honorable Court to exercise its discretionary jurisdiction and accept the instant case for review.

Respectfully submitted,

JAMES B. GIBSON
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been hand delivered to the Honorable Robert A. Butterworth, Attorney General, 210 N. Palmetto Avenue, Suite 447, Daytona Beach, Florida 32114 in his basket at the Fifth District Court of Appeal and mailed to Henry Taylor, #113211, P.O. Box 158, Lowell, Fl. 32663-0158 on this 26th day of June, 1991.

Michael S. Becker
MICHAEL S. BECKER
ASSISTANT PUBLIC DEFENDER