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**FILED**

SID J. WHITE

JUL 20 1991

CLERK, SUPREME COURT

By

Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

BOBBY ROSS,

Petitioner,

v.

CASE NO.: 78,179

STATE OF FLORIDA,

Respondent.

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RESPONDENT'S BRIEF ON JURISDICTION

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IN THE SUPREME COURT OF FLORIDA

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RESPONDENT'S BRIEF ON JURISDICTION

PRELIMINARY STATEMENT

Petitioner, BOBBY ROSS, appellant below, and defendant in the trial court will be referred to herein as "Petitioner." Respondent, the State of Florida, and appellee below will be referred to herein as "the State." References to the record on appeal will be by the symbol "R" followed by the appropriate page number.

STATEMENT OF THE CASE AND FACTS

Appellee is in substantial agreement with Appellant's version of the case and facts.

SUMMARY OF ARGUMENT

The constitutionality of 775.084, Fla. Stat. has been challenged in district courts throughout the state. The district appellate courts have uniformly upheld constitutionality and it is not necessary for this court to grant review of this issue.

## ARGUMENT

### ISSUE I

There have issued a series of decision from district appellate courts upholding the constitutionality of section 775.084 Fla. Stat. including from the First District, Pittman v. State, 570 So.2d 1045 (Fla. 1st DCA 1990); Henderson v. State, 569 So.2d 925 (Fla. 1st DCA 1990); Barber v. State, 564 So.2d 1169 (Fla. 1st DCA 1990), review dismissed no. 76,482 (Fla. Dec. 14, 1990) and Holley v. State, 577 So.2d 624 (Fla. 1st DCA 1991). From the Fifth District comes King v. State, 557 So.2d 899 (Fla. 5th DCA 1990) rev. denied 564 So.2d 1086 (Fla. 1990) and Long v. State, 558 So.2d 1091 (Fla. 5th DCA 1990). From the Second District comes Roberts v. State, 559 So.2d 289 (Fla. 2nd DCA 1990) dismissed, 564 So.2d 488 (Fla. 1990) citing to this court's opinion in Eutsey v. State, 383 So.2d 219 (Fla. 1980). The Second District has spoken on the issue in Johnson v. State, 564 So.2d 1174 (Fla. 4th DCA 1990); the fourth in Collins v. State, 571 So.2d 583 (Fla. 4th DCA 1990); Mitchell v. State, 16 F.L.W. 697 (Fla. 4th DCA March 13, 1991).

In view of the Supreme Court denial of review in King, supra, and consistent position on the issue among the district appellate courts, and the historical validity of recidivist statute, it is not necessary for this court to accept jurisdiction as to this matter.

CONCLUSION

Based on the above cited legal authorities, Appellee prays this Honorable Court affirm the judgment rendered in this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been forwarded by U.S. Mail to Lynn A. Williams, Assistant Public Defender, Leon County Courthouse, Fourth Floor North, 301 South Monroe Street, Tallahassee, Florida, this 29<sup>th</sup> day of July, 1991.

Marilyn McFadden  
MARILYN MCFADDEN  
Assistant Attorney General