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PRELIMINARY STATEMENT

Leif Nordberg was the defendant in the trial court, the appellee in the Fourth District Court of Appeal and is the Petitioner before this Court. Therefore, he will be referred to herein as "Petitioner"

The State of Florida **was** the prosecution in the trial court, the appellant in the Fourth District Court of Appeal and is the Respondent before this Court. Therefore, the State of Florida will be referred to as the "Respondent" or "State" herein.

The following symbols will be used:

"R" **Record on Appeal.**

"PB" Petitioner's Brief on Jurisdiction.

STATEMENT OF THE CASE AND FACTS

Respondent accepts Petitioner's statement of the case and facts to the limited extent that they represent a reasonably accurate, non-argumentative synopsis of the proceedings below.

SUMMARY OF THE ARGUMENT

Since the rule set out in Jollie v. State, ~~infra~~, would allow this Court to exercise its discretionary review of a per curiam opinion when **the** District Court of Appeal cites as controlling authority a case which is currently pending review by this Court, this Court may exercise its discretionary jurisdiction **as** the referenced case is pending review before this Court. Alternatively, this Court may stay the **exercise** of its discretionary jurisdiction **to** review sub judice, await **the** resolution of the merits in Scates, as it is dispositive of the issue presented at bar, **thereby** negating the **need** for further filing on the merits.

ARGUMENT

THIS COURT MAY EXERCISE ITS
DISCRETIONARY JURISDICTION TO REVIEW THE
INSTANT CASE.

States v. Scates, 16 FLW 2203 (Fla. 4th DCA August 21, 1991) is currently pending review before this Court, following certification by the Fourth District Court of Appeals of the following question as one of great public importance:

MAY A TRIAL COURT PROPERLY DEPART FROM
THE MINIMUM MANDATORY PROVISIONS OF
SECTION 893.13(1)(e), FLORIDA STATUTES
(1989), UNDER THE AUTHORITY OF THE DRUG
REHABILITATION PROVISION OF SECTION
397.12, FLORIDA STATUTES (1989) ?

Id. In its decision in the instant case, the Fourth District Court of Appeal cited States v. Scates, *supra*, as controlling authority. See State v. Nordberg, Case No. 91-0580 (Fla. 4th DCA October 2, 1991) (Appendix - **Exh.** A).


Under Jolie v. State, 405 So.2d 418 (Fla. 1981) this Court may exercise its discretionary review of a per curiam opinion when the District Court of Appeal cites as controlling authority a case which is currently pending review by this Court. Accordingly, this Court may decide to exercise its discretionary jurisdiction in sub judice. In the alternative, the State would recommend that this Court stay the exercise of its discretionary jurisdiction to review the decision below, await the resolution of the merits in Scates (which is dispositive of the issue presented at bar), thereby negating the need for further filing on the merits.

CONCLUSION

Based upon the foregoing arguments and authorities cited herein, Respondent respectfully requests this Court to stay jurisdiction pending the resolution of Scates, supra or, alternatively, to exercise its discretionary review in this case.

Respectfully submitted,


ROBERT A. BUTTERWORTH
Attorney General
Tallahassee, Florida,



JACQUELINE BARAKAT
Assistant Attorney General
Florida Bar No. 780707
111 Georgia Avenue, Suite 204
West Palm Beach, Florida 33401
(407) 837-5062

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Brief has been furnished by courier to: ELLEN MORRIS, Assistant Public Defender, 301 North Olive Avenue/9th Floor, West Palm Beach, Florida this 7th day of November, 1991.



Of Counsel

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