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ISSUE

THE DECISION OF THE DISTRICT COURT IS IN
CONFLICT WITH GOULD v. STATE, 577 So.2d
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STATEMENT OF THE CASE AND FACTS

Respondent accepts the petitioner's statement of the case and facts.

SUMMARY OF ARGUMENT

Respondent agrees that the district court's decision is in conflict with Gould v. State, infra.

ARGUMENT

ISSUE

THE DISTRICT COURT DECISION IS IN CONFLICT WITH GOULD V. STATE, 577 So.2d 1302 (Fla. 1991).

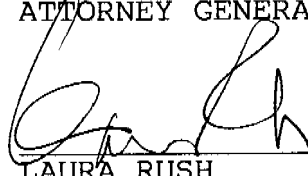
Respondent agrees that the district court decision, stating that "[b]ecause aggravated assault with a deadly weapon is a Category II lesser included offense of robbery with a firearm, we apply section 924.34 and order the trial court to enter the judgment of conviction in accordance with the above directive" (Petitioner's Appendix at 6) is in conflict with Gould v. State, 577 So.2d 1302 (Fla. 1991). In Gould, the court held that section 924.34, Florida Statutes, applies only to necessarily included offenses. Respondent's agreement to conflict jurisdiction under Gould does not imply agreement with the district court's conclusion that aggravated assault with a deadly weapon is a permissive lesser included offense of robbery with a firearm.

CONCLUSION

Respondent agrees that the decision of the district court is in conflict with Gould v. State, supra.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL



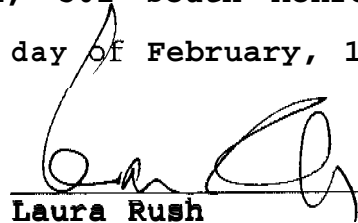
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing answer brief has been furnished by U.S. Mail to Lynn A. Williams, Assistant Public Defender, Leon County Courthouse, Fourth Floor North, 301 South Monroe Street, Tallahassee, FL 32301 this 17th day of February, 1991.



Laura Rush
Assistant Attorney General