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FILED

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MAY 1 1992

CLERK SUPREME COURT

By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

RICHARD MURL BOOMER, JR.

Petitioner,

vs.

Case No. 79,638

STATE OF FLORIDA,

Respondent.

**ON PETITION FOR DISCRETIONARY REVIEW OF THE DECISION OF THE
SECOND DISTRICT COURT OF APPEAL**

**APPEAL FROM THE CIRCUIT COURT
IN AND FOR POLK COUNTY
STATE OF FLORIDA**

BRIEF OF RESPONDENT ON JURISDICTION

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SRH/srr

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WHETHER THE DECISION IN BOOMER V. STATE,
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SUMMARY OF THE ARGUMENT

Both Wood v. State, 593 So.2d 557 (Fla. 5th DCA 1992), and this case involved non guidelines sentence(s) and guidelines sentence(s). In both cases the non guidelines sentences were imposed to be served prior to the guidelines sentences. In this respect there is no conflict. The Fifth District Court of Appeal was incorrect in finding the guidelines sentence to be a departure. The opinion in Wood, supra should be quashed.

ARGUMENT

ISSUE

WHETHER THE DECISION IN BOOMER V. STATE,
CASE NUMBER **91-00533** (FLA. 2D DCA, MARCH
20, 1992), IS IN CONFLICT WITH WOODS V.
STATE, 593 SO.2D 557 (FLA. 5TH DCA 1992).

In Wood v. State, 593 So.2d 557 (Fla. 5th DCA 1992), and in Boomer v. State, Case No. 91-00533 (Fla. 2d DCA, March 20, 1992), the defendants received non guidelines sentences and consecutive guidelines sentences, respectively. There is no conflict in this respect. The Fifth District Court of Appeal **was** incorrect in remanding the Wood case **for** resentencing on the guidelines sentence.

The habitual felony offender sentences Wood was eligible to receive **are** not guidelines sentences and cannot be considered a departure. **§775.084(4)(e)**, Fla. Stat. (1989). The life sentence Boomer was eligible to receive is not a guidelines sentence and cannot be considered a departure. **§775.082(1)**, Fla. Stat. (1976). In both **cases**, the other sentences that Wood and Boomer received **were** within the guidelines. In both cases, the defendants, respectively, were clearly subject to two kinds of sentences.

The Fifth District Court of Appeal's opinion in Wood, supra, should be quashed.

CONCLUSION

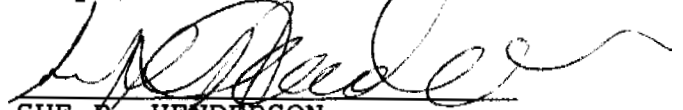
Based on the foregoing facts, arguments, and citations of authority, this Court should deny discretionary review.

Respectfully submitted,

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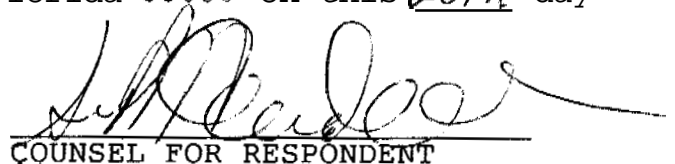


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Regular Mail to CYNTHIA J. DODGE, ESQ., Assistant Public Defender, Polk County Courthouse, P.O. Box 9000-Drawer PD, Bartow, Florida 33830 on this 28th day of April, 1992.



COUNSEL FOR RESPONDENT