

**FILED**

SID J. WHITE

JUN 15 1992

CLERK, SUPREME COURT.

By \_\_\_\_\_  
Chief Deputy Clerk

IN THE SUPREME COURT OF FLORIDA

DANIEL TERRENCE SAVOURY,  
Petitioner,

v.

Case No. 79,715

STATE OF FLORIDA,  
Respondent.

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ON DISCRETIONARY REVIEW FROM  
THE DISTRICT COURT OF APPEAL  
FOR THE SECOND DISTRICT  
STATE OF FLORIDA

BRIEF OF RESPONDENT ON JURISDICTION

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SUMMARY OF THE ARGUMENT

There is prima facia evidence of conflict in light of this court's granting review of McCall. This court should, however, decline to accept jurisdiction. Accepting jurisdiction would place an unnecessary strain on already overburdened judicial and prosecutorial resources. Declining jurisdiction will not prejudice the petitioner. In the event that there is a result favorable to his position in McCall, he will have access to relief in the circuit court on the basis of this court's decision.

ARGUMENT

WHETHER THE DECISION BELOW IS IN  
JURISDICTIONAL CONFLICT WITH JOHNSON V.  
STATE, 589 SO.2D 1370 (FLA. 1ST DCA 1991)?

Petitioner contends that the decision below is in conflict with Johnson v. State, 589 So.2d 1370 (Fla. 1st DCA 19 1). He contends that the decision below is a citation pca with a citation to McCall v. State, 583 So.2d 411 (Fla. 4th DCA 1991). Petitioner has neglected to attach a copy of that decision or give any kind of citation to it so respondent is unable to even verify that the decision below is even what petitioner claims.

Assuming arguendo that the decision below is as petitioner claims, a pca with a citation to McCall then there is prima facia evidence of conflict. State v. Lofton, 534 So.2d 1148 (Fla. 1988), Jollie v. State, 405 So.2d 418 (Fla. 1981). This prima facia evidence of conflict give this court discretion to grant review. The court does not have to exercise that discretion. It may choose to refuse to exercise that jurisdiction.

This court should choose to decline jurisdiction in this case. It already has at least one case, McCall, pending on the merits of whether chapter 89-280, Laws of Florida, violates the single subject rule of the constitution. Multiplying the number of cases presenting the same question would be a misuse of scarce resources. It would occupy the court's already over burdened time with duplicative briefs. And, it would burden the already over burdened respondent's attorneys time as well. In these times of scarce governmental resources, this court should take

every action that it can to minimize the strain on those resources.

Declining jurisdiction would cause no prejudice to the petitioner. Should this court affirm McCall, then there would be no relief due to the petitioner. Should this court reverse McCall and approve the result in Johnson, then petitioner could take this court's decision to the circuit court and get relief under Rule 3.800 as an illegal sentence can be corrected at any time.

CONCLUSION

WHEREFORE Respondent asks the court to exercise its discretion on the basis of the above and foregoing reasons, arguments, and authorities.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing Brief of Respondent on Jurisdiction has been furnished to, Daniel T. Savoury, DOC # 237288, DeSoto Correctional Institution, Arcadia, Florida 33821, Petitioner, by United States Mail, postage prepaid, this 11<sup>th</sup> day of June, 1992.



OF COUNSEL FOR RESPONDENT