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**FILED**

SID L. WHITE

JUL 27 1992

CLERK, SUPREME COURT

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

IN THE SUPREME COURT OF FLORIDA

CASE NO. 80,174

ERIC ARNAZ ASHLEY,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

\*\*\*\*\*

ON DISCRETIONARY REVIEW FROM THE DISTRICT COURT  
OF APPEAL OF THE STATE OF FLORIDA, FOURTH DISTRICT

\*\*\*\*\*

RESPONDENT'S BRIEF ON JURISDICTION

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**POINT ON APPEAL**

ALTHOUGH PETITIONER PROPERLY INVOKES THE DISCRETIONARY JURISDICTION OF THIS COURT SINCE THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL DOES EXPRESSLY AND DIRECTLY CONFLICT WITH A DECISION OF THE SECOND DISTRICT COURT OF APPEAL, THIS COURT NEED NOT ACCEPT JURISDICTION.

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PRELIMINARY STATEMENT

The Petitioner was the Appellant in the Fourth District Court of Appeal and the defendant in a criminal prosecution from the Seventeenth Judicial Circuit, in and for Broward County. The Respondent, State of Florida, was the Appellee and the prosecution, respectively in the lower courts. In this Brief, the parties will be referred to as they appear before this Honorable Court.

The symbol "PA" will be used to refer to Exhibit A of Petitioner's Appendix, which is a conformed copy of the District Court's opinion.

STATEMENT OF THE CASE AND FACTS

Respondent does not accept Petitioner's statement of the case and facts. Respondent would instead rely on the opinion of the District Court of Appeal for its statement of the case and facts (PA).

SUMMARY OF THE ARGUMENT

Respondent agrees that the opinion below conflicts with Amaya v. State, 580 So.2d 885 (Fla. 2d DCA 1991), but argues that the Fourth District Court's opinion is a correct analysis of the law. Respondent asks that this court not accept jurisdiction.

ARGUMENT

ALTHOUGH PETITIONER PROPERLY  
INVOKES THE DISCRETIONARY  
JURISDICTION OF THIS COURT SINCE  
THE DECISION OF THE FOURTH  
DISTRICT COURT OF APPEAL DOES  
EXPRESSLY AND DIRECTLY CONFLICT  
WITH A DECISION OF THE SECOND  
DISTRICT COURT OF APPEAL, THIS  
COURT NEED NOT ACCEPT  
JURISDICTION.

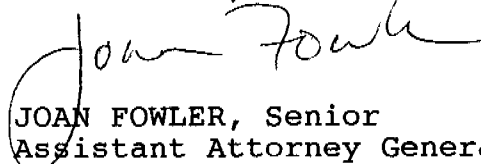
Petitioner seeks review through conflict jurisdiction pursuant to Article V, Section 3(b), Fla.Const. (1980) and Fla.R.App.P. 9.030(a)(2)(A)(IV), which provides that the discretionary jurisdiction of the Supreme Court may be sought to review a decision of district court of appeal which expressly and directly conflicts with a decision of another district court of appeal or of the Supreme Court on the same question of law. While acknowledging that conflict does exist between the opinion below and Amaya v. State, 580 So.2d 885 (Fla. 2d DCA 1991), Respondent respectfully requests this Honorable Court decline to take jurisdiction in this case as the opinion of the Fourth District Court of Appeal was correctly decided.

CONCLUSION

WHEREFORE, based on the foregoing argument and the authorities cited therein, Respondent respectfully requests this Honorable Court decline to accept discretionary jurisdiction in the instant case.

Respectfully submitted,

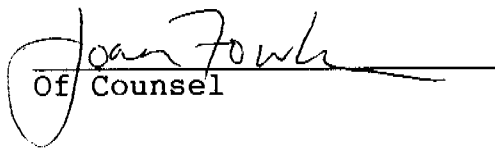
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U.S. Mail to ERIC ARNAZ ASHLEY, Esquire, 2937 S.W. 27th Ave., Suite 206, Miami, Florida 33133 this 23 day of ~~June~~ <sup>July</sup>, 1992.

  
Of Counsel