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**FILED**

SID J. WHITE

SEP 24 1992

CLERK, SUPREME COURT

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

IN THE SUPREME COURT OF FLORIDA

WALTER LEE PEARCE,

Petitioner,

v.

Case No. 80,379

STATE OF FLORIDA,

Respondent.

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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/ahp

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SUMMARY OF THE ARGUMENT

While this Honorable Court has jurisdiction to review the instant case, the State respectfully requests this Court decline to take jurisdiction in the interest of conserving limited judicial resources.

ARGUMENT

ISSUE

WHETHER DISCRETIONARY REVIEW SHOULD BE  
ACCEPTED IN THIS CASE TO REVIEW THE 1989  
AMENDMENTS TO THE HABITUAL OFFENDER STATUTE

In the instant case, the basic issue presented to the Sixth Judicial Circuit Court under a Motion for **Post** Conviction Relief pursuant to Florida Rule of Criminal Procedure 3.850 was whether the habitual felony offender statute applied and used to enhance Petitioner's sentence was constitutional at the time of his sentencing, citing Johnson v. State, 589 So.2d 1370 (Fla. 1st DCA 1991). Johnson is currently pending in this Honorable Court as State of Florida v. Cecil B. Johnson, Nos. 79,150 and 79,204 (oral argument scheduled to be held in November 1992). In denying Petitioner's Motion for Post Conviction Relief, the Circuit Court noted its awareness that section 775.084, Florida Statutes, has been found to violate the single subject prohibition, citing to Johnson, supra. Notwithstanding the above, Petitioner **was**, in the court's judgment, properly sentenced as a habitual offender.

The Second District Court of Appeal, pursuant to Florida Rule of Appellate Procedure 9.140(g), affirmed Petitioner's sentence citing to McCall v. State, 583 So.2d 411 (Fla. 4th DCA 1992), rev. granted, 593 So.2d 1052 (Fla. 1992). More recently the Second District Court of Appeal in Crews v. State, 17 F.L.W. D1955 (Fla. 2d DCA Aug. 21, 1992) specifically agreed with the Fourth District in McCall, supra and found "**that** the 1989

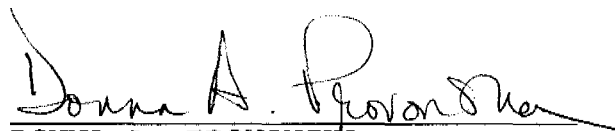
amendments to the habitual offender statute were not invalid as violative of the one subject provision of the Florida Constitution." Therefore, it would appear that this Honorable Court has jurisdiction based upon conflict but Respondent submits, however, that this Court should decline to accept jurisdiction in this case in the interest of conserving valuable limited judicial resources.

CONCLUSION

Based upon the foregoing arguments and citations of authority, Respondent respectfully requests this Honorable Court to refuse to exercise discretionary jurisdiction to review this case.

Respectfully submitted,

ROBERT A. BUTTERWORTH  
ATTORNEY GENERAL

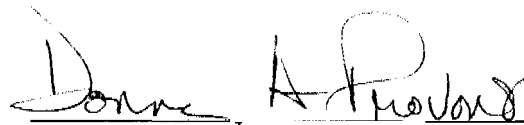


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true **and** correct copy of the foregoing has been furnished by U.S. mail to WALTER LEE PEARCE, #755135 1798, P. O. Box 1100, Avon Park Correctional Institution, Avon Park, Florida 33825-1100, this 22 " "day of September, 1992.



OF COUNSEL FOR RESPONDENT