IN THE SUPREME COURT OF FLORIDA

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| ROBERT ANTON,<br>Petitioner,<br>v.<br>STATE OF FLORIDA,<br>Respondent. | Case No. SC08-0723 |

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

# AMENDED ANSWER BRIEF OF RESPONDENT ON JURISDICTION

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## STATEMENT OF THE CASE AND FACTS

On May 7, 1996, a jury found Petitioner guilty of aggravated assault, and attempted robbery with a firearm. Petitioner was sentenced and filed his notice of appeal. Sixty days after the jury's verdict, Petitioner filed a motion for new trial (7/17/96), which was granted by the trial court (8/28/96), after a hearing. Respondent timely sought appeal in the Second District Court of Appeal, following the denial of its motion for rehearing.

On appeal, Respondent alleged the trial court lacked jurisdiction to grant a new trial, where the motion for new trial was untimely filed. Also, Respondent maintained an alleged comment on the defendant's right to remain silent was harmless. The Second District Court of Appeal reversed the granting of a new trial and affirmed the sentences, but directed the trial court, on remand to correct the judgment and sentence, "to reflect that attempted robbery with a firearm is a second-degree felony." State v. Anton, 700 So. 2d 743 (Fla. 2d DCA 1997). The Second District Court of Appeal issued its mandate on November 17, 1997.

On May 25, 2004, seven years after his judgment and sentence became final; Petitioner filed a motion to comply with mandate, in the trial court. Subsequently, on June 4, 2004, the trial court amended the judgment and sentence to reflect the conviction for attempted robbery with a firearm is a second-degree felony. The

trial court erroneously and over the state's objection found the rule 3.850 motion was timely filed, granted an evidentiary hearing, but denied Petitioner's claims on the merits. The Second District Court of Appeal declined to review Petitioner's claims on the merits, after finding the Petitioner's rule 3.850 motion was time-barred.

## SUMMARY OF THE ARGUMENT

Petitioner cannot establish he is entitled to the discretionary review of this Court on the basis of express or direct conflict between the Second District's ruling in Anton v. State, 976 So. 2d 6 (Fla. 2d DCA 2008), and this Court's decision in Huff v. State, 569 So. 2d 1247 (Fla. 1990). Specifically, Petitioner alleges the Second District's misapplication of Huff, to the facts of the instant case, created conflict. Respondent respectfully submits the Second District correctly applied the dictates of Huff, thus neither direct, nor express conflict exists. Consequently, Respondents requests this Court deny review.

## ARGUMENT

## ISSUE ONE

WHETHER THE SECOND DISTRICT'S OPINION IN ANTON v. STATE, 976 So. 2d 6 (Fla. 2d DCA 2008) DIRECTLY AND EXPRESSLY CONFLICTS WITH HUFF v. STATE, 569 So. 2d 1247 (Fla. 1990).

The jurisdiction of this Court is limited to a narrow class of cases enumerated in the Florida Constitution. See, Fla. Const. Art. V, §3(b)(3); See also, Fla. R. App. P. 9.030(a)(2)(A)(i). This Court can exercise its jurisdiction where a district court's opinion "expressly and directly conflicts with the decision of another district court of appeal, or with the supreme court on the same question of law." Fla. Const. Art. V, §3(b)(3)(emphasis added). The rationale for limiting this Court's jurisdiction is the recognition that district courts "are courts primarily of final appellate jurisdiction and to allow such courts to become intermediate courts of appeal would result in a condition far more detrimental to the general welfare and the speedy and efficient administration of justice than that which the system was designed to remedy." Jenkins v. State, 385 So.2d 1356, 1358 (Fla. 1980).

In Anton v. State, 976 So. 2d 6 (Fla. 2d DCA 2008), the Second District rendered an opinion finding Petitioner's motion for post-conviction relief, filed more than two years after the judgment and

sentence of his direct appeal became final, was untimely. Citing Florida Rule of Criminal Procedure 3.850 and this Court's decision in Huff, (citing Scull v. State, 569 So. 2d 1251 (Fla. 1990), the Second District correctly rejected Petitioner's assertion, the time for filing relief under rule 3.850 was tolled until the trial court corrected his judgment and sentence. Anton, 976 So. 2d at 6. Petitioner argues this holding conflicts with Huff because the Second District misapplied Huff, thus creating conflict. Petitioner is mistaken.

In Huff, a defendant's motion for post-conviction relief was stricken as null and void, because it was signed and filed by out of state counsel. Though counsel had simultaneously filed a motion to admit as pro hac vice, the trial court did not rule on it and later denied Huff's motion for rehearing. On review, Huff argued his due process rights were violated when the trial court struck his rule 3.850 motion, on the basis of counsel's status, without first ruling on the pro hac vice motion. This Court agreed and went on to find the trial court erroneously denied Huff's motion to vacate, as untimely filed. Huff, 569 So. 2d at 1250.

Huff had simultaneously filed a second motion to vacate judgment and sentence, signed by a Florida Bar member, along with his motion for rehearing. When the trial court denied this second motion to vacate, it did so after determining the first motion was

untimely. This Court disagreed. Huff, a death row inmate, had received notification from the clerk of the court, the mandate in his case issued on December 2, 1986. Therefore, because Huff's initial motion to vacate was filed December 2, 1998, or two years from the date of the "final disposition of his appeal," the trial court erred by finding the motion was untimely filed. Id. at 1251.

The Huff Court stated that where a defendant seeks no writ of certiorari in the United States Supreme Court, the time for seeking relief by rule 3.850 begins to run when the Court issues its mandate. Huff, 569 So. 2d at 1251. Moreover, the judgment and sentence become final when direct review proceedings are completed and jurisdiction to entertain the motion for post-conviction relief returns to the trial court. Id.

The Second District's holding in Anton, that the direct review proceedings were complete when its mandate issued in November of 1997, is consistent with this Honorable Court's ruling in Huff. See, Beaty v. State, 701 So. 2d 856 (Fla. 1997). (A trial court has jurisdiction to consider a motion to vacate once the district court's mandate has issued). Petitioner acknowledges the issuance of the mandate, in his case, returned jurisdiction to the trial court, however; he maintains the trial court's failure to exercise its jurisdiction, by correcting the judgment and sentence, extended the direct review proceedings, until the trial court amended the

sentence in 2004. Petitioner's view is wholly unsupported by any authority from this or any Court. The Second District's direction to the trial court, to correct the judgment and sentence, did not amount to a reversal of the sentence. See, State v. Anton, 700 So. 2d at 750. On the facts before this Court, Petitioner cannot demonstrate the Second District created conflict, when it correctly applied the precedent set forth in Huff to the instant case. Consequently, this Court should decline review.

## ISSUE TWO

WHETHER THE ISSUE BEFORE THIS COURT IS ONE OF GREAT PUBLIC IMPORTANCE.

This Court may "review any decision of a district court of appeal that passes upon a question certified by it to be of great public importance." Fla. Const. Art. V, § 3(b)(4); See also, Fla. R. App. P. 9.030(a)(2)(A)(v). The determination of whether an issue is one of great public importance is within the discretion of the district court. A party's contention that an issue is of great public importance is insufficient to vest jurisdiction in this Court. Petitioner has failed to show the Second District applied an incorrect legal standard to affirm the convictions and sentence. Consequently, Petitioner has failed to establish any basis for this Court to exercise its jurisdiction in this case.

## CONCLUSION

Respondent respectfully requests that this Honorable Court decline review of the instant case.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to A.R. Mander, III, Greenfelder, Mander, Murphy, Dwyer & Morris, 14217 Third Street, Dade City, Florida 33523, this 13th day of May, 2008.

## CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 12-point Courier New, in compliance with Fla. R. App. P. 9.210(a)(2).

**Respectfully submitted,**
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