

IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. SC10-1359

**MOISES ESPINOSA,**

Petitioner,

vs.

**STATE OF FLORIDA,**

Respondent.

**RESPONDENT'S BRIEF ON JURISDICTION**

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### PRELIMINARY STATEMENT

Petitioner was the defendant and Respondent was the prosecution in the Criminal Division of the Circuit Court of the Nineteenth Judicial Circuit, in and for St. Lucie County, Florida. Petitioner was the Appellant and Respondent was the Appellee in the Fourth District Court of Appeal ("Fourth District"). In this brief, the parties shall be referred to as they appear before this Honorable Court except that Respondent may also be referred to as the State.

### STATEMENT OF THE CASE AND FACTS

"The jurisdictional brief should be a short, concise statement of the grounds for invoking jurisdiction and the necessary facts. It is not appropriate to argue the merits of the substantive issues involved in the case or discuss any matters not relevant to the threshold jurisdictional issue". See, Committee Notes for 1970 Amendment of Rule 9.120.

The State accepts petitioner's Statement of the Case and Facts to the extent that it represents an accurate non-argumentative recitation of the procedural history and facts of this case.

### SUMMARY OF THE ARGUMENT

This Court should decline jurisdiction. Petitioner has no basis to invoke this Court's discretionary jurisdiction. Petitioner has not cited any decisions in express and direct conflict with the instant decision which would support the invocation of discretionary jurisdiction.

### ARGUMENT

#### **THERE IS NO BASIS FOR DISCRETIONARY JURISDICTION TO REVIEW THE DECISION OF THE FOURTH DISTRICT.**

Rule 9.030(a)(2)(A), Fla. R.App. P. states that discretionary jurisdiction of this Court may be sought to review decisions of district courts of appeal that

- (i) expressly declare valid a state statute;
- (ii) expressly construe a provision of the state or federal constitution;
- (iii) expressly affect a class of constitutional or state officers
- (iv) expressly and directly conflict with a decision of another district court of appeal or of the supreme court on the same question of law;
- (v) pass upon a question certified to be of great public importance
- (vi) are certified to be in direct conflict with decisions of other district courts of appeal;

In the instant case, Petitioner seeks to invoke the discretionary jurisdiction of this Court. However, Petitioner does not argue that the instant decision falls within any of the categories identified in Rule 9.030(a)(2)(A). Instead, Petitioner's jurisdictional brief improperly addresses the merits of the Fourth District Court of Appeals's decision. Fla. R. App. P. 9.120(d). Jurisdiction should therefore be declined.

CONCLUSION

WHEREFORE, based on the foregoing arguments and the authorities cited therein, Respondent respectfully requests this Court DECLINE Petitioner's request for discretionary over the instant cause.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing "Respondent's Brief on Jurisdiction" has been furnished to: Moises Espinoza, Gulf CI, 500 Ike Steele Road, Main Unit, Wewahitchka, FL 32465 on July 30, 2010.

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KATHERINE Y. MCINTIRE

CERTIFICATE OF TYPE SIZE AND STYLE

In accordance with Fla. R. App. P. 9.210, the undersigned hereby certifies that the instant brief has been prepared with 12 point Courier New Type.

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KATHERINE Y. MCINTIRE