

IN THE SUPREME COURT OF FLORIDA

DEAN KENNETH ROCKMORE,

Petitioner,

vs.

DCA CASE NO. 5D10-1898

STATE OF FLORIDA,

S. CT. CASE NO. _____

Respondent.

_____ /

**ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL**

PETITIONER'S BRIEF ON JURISDICTION

JAMES S. PURDY
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

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OTHER AUTHORITIES CITED:

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STATEMENT OF THE CASE AND FACTS

Petitioner was charged by Information with the offense of robbery with a firearm. He was found guilty of the charge and sentenced. Petitioner argued that his proposed special jury instruction should have been given on the theory of abandonment, pursuant to the authority of Peterson v. State, 24 So. 3d 686, 689 (Fla. 2d DCA 2009). The trial court gave an erroneous instruction, modified from that proposed by the Petitioner.

On March 2, 2012, the Fifth District Court of Appeal issued an opinion affirming the Petitioner's judgment and sentence, while acknowledging conflict with Peterson v. State.

Petitioner filed a timely Notice To Invoke the discretionary jurisdiction of this Court on March 21, 2012.

SUMMARY OF ARGUMENT

When a district court of appeal acknowledges that it expressly and directly conflicts with a decision of another district court of appeal on the same question of law, the Supreme Court has discretionary jurisdiction to accept the case for review.

ARGUMENT

THIS COURT HAS DISCRETIONARY JURISDICTION
TO ACCEPT THE DECISION OF THE FIFTH DISTRICT
COURT OF APPEAL BELOW FOR REVIEW.

Petitioner sought review of his conviction on the grounds that his requested jury instruction on the theory of abandonment was improperly modified and effectively denied, and that the denial was contrary to the decision in Peterson v. State, 24 So.3d 686 (Fla. 2d DCA 2009).

The Fifth District Court of Appeal issued an opinion in the instant case on March 2, 2012, affirming Petitioner's judgment and sentence and rejecting his arguments. In doing so, the Fifth District expressly and directly acknowledged conflict with the decision of the Second District in Peterson v. State, in which that Court held that a special instruction that defendant was not guilty of robbery if the property was abandoned prior to the use of force was required because the standard instruction did not inform the jury that if the property was abandoned prior to the use of force, under the law the taking and the use of force were not a continuous series of acts or events. The Second District also held that, as such, the standard instruction given did not cover this theory of defense. Id., at 689.

This Honorable Court has jurisdiction to accept the instant case for discretionary review pursuant to Rule 9.030(a)(2)(A)(iv), Florida Rules of

Appellate Procedure.

CONCLUSION

For the reasons expressed herein, the petitioner respectfully requests that this Honorable Court exercise its discretionary jurisdiction and grant review of the Fifth District Court of Appeal's decision in this cause.

Respectfully submitted,

JAMES S. PURDY
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been hand delivered to the Honorable Pamela Jo Bondi, Attorney General, 444 Seabreeze Blvd., Fifth Floor, Daytona Beach, Florida 33118, and mailed to Mr. Dean Rockmore, #077708, Everglades Correctional Institution, 1599 S. W. 187th Avenue, Miami, FL 33194, on this 26th day of March, 2012.

KATHRYN ROLLISON RADTKE
Assistant Public Defender

CERTIFICATE OF FONT

I HEREBY certify that the size and style of type used in this brief is 14 point proportionally spaced Times New Roman.

KATHRYN ROLLISON RADTKE
Assistant Public Defender