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IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. SC13-1326

TARVIS M. WILSON,

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 Fifteenth Judicial Circuit, in and for Palm Beach County, Florida. Petitioner was the Appellant and Respondent was the Appellee in the Fourth District Court of Appeal. 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.

All emphasis in this brief is supplied by Petitioner unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

The only relevant facts to a determination of this Court's discretionary jurisdiction under Article V, Section 3(b)(3) of the Florida Constitution are those set forth in the appellate opinion sought to be reviewed. The opinion in this case simply cited to this Court's opinion in Alston v. State, 723 So. 2d 148 (Fla. 1998).

SUMMARY OF THE ARGUMENT

This Court should decline to accept jurisdiction to review the instant case because the opinion of the Fourth District Court of Appeal does not expressly and directly conflict with decisions from this Court. An opinion simply citing to a Florida Supreme Court case does supply a basis for discretionary jurisdiction.

ARGUMENT

POINT I

THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH A DECISION THIS COURT.

It is well settled that in order to establish conflict jurisdiction, the decision sought to be reviewed must expressly and directly create conflict with a decision of another District Court of Appeal or of the Supreme Court on the same question of law. Art. V, Sect. 3(b)(3) Fla. Const.; Jenkins v. State, 385 So.2d 1356 (Fla. 1980).

For two court decisions to be in express and direct conflict for the purpose of invoking this Court's discretionary jurisdiction under Florida Rule of Appellate Procedure 9.030(a)(2)(A)(iv), the decisions should speak to the same point of law, in factual contexts of sufficient similarity to permit the inference that the result in each case would have been different had the deciding court employed the reasoning of the other court. See generally Mancini v. State, 312 So. 2d 732 (Fla. 1975). The conflict must be of such magnitude that if both decisions were rendered by the same court, the later decision would have the effect of overruling the earlier decision. Kyle v. Kyle, 139 So. 2d 885, 887 (Fla. 1962). However, "[if] the two

cases are distinguishable in controlling factual elements or if the points of law settled by the two cases are not the same, then conflict cannot arise." Id. at 887. See also Reaves v. State, 485 So. 2d 829, 830 (Fla. 1986) ("Conflict between decisions must be express and direct, i.e., it must appear within the four corners of the majority's decision. Neither a dissenting opinion nor the record itself can be used to establish jurisdiction.") and Mystan Marine, Inc. v. Harrington, 339 So. 2d 200, 210 (Fla. 1976) (This Court's discretionary jurisdiction is directed to a concern with decisions as precedents, not adjudications of the rights of particular litigants).

"This Court has long recognized that it lacks jurisdiction over unelaborated *per curiam* decisions in the context of discretionary review jurisdiction." Jackson v. State, 926 So.2d 1262, 1265 (Fla. 2006). See also Jenkins v. State, 385 So.2d 1356 (Fla. 1980).

CONCLUSION

WHEREFORE, based on the foregoing arguments and the authorities cited therein, Respondent respectfully requests this Court DENY Petitioner's request for discretionary review 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
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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.

James J. Carney