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IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v.

Case No. SC13-

DAVID E. JOHNSON,

Respondent.

JURISDICTIONAL BRIEF OF PETITIONER

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#### PRELIMINARY STATEMENT

Petitioner, the State of Florida, the Appellee in the District Court of Appeal and the prosecuting authority in the trial court, will be referenced in this brief as Petitioner, the prosecution, or the State. Respondent, David E. Johnson, the Appellant in the DCA and the defendant in the trial court, will be referenced in this brief as Respondent or by proper name. "PJB" will designate Petitioner's Jurisdictional Brief. That symbol is followed by the appropriate page number.

A bold typeface will be used to add emphasis. Italics appeared in original quotations, unless otherwise indicated.

#### STATEMENT OF THE CASE AND FACTS

The pertinent history and facts are set out in the decision of the lower tribunal, attached in slip opinion form [hereinafter referenced as "slip op."]. It also can be found at 38 Fla. L. Weekly D953.

#### SUMMARY OF ARGUMENT

This Court has discretionary jurisdiction to review the First District's decision in the instant case, since the decision certifies conflict with the Third District's decision in Lawton v. State, 109 So.3d 825 (Fla. 3rd DCA 2013). This Court should exercise its discretion and accept jurisdiction because the conflict between the districts creates an uneven application of the law in Florida, and review of the First District's decision would resolve this conflict.

## ARGUMENT

ISSUE: WHETHER THIS COURT HAS DISCRETIONARY JURISDICTION PURSUANT TO A CERTIFIED DIRECT CONFLICT BETWEEN THE FIRST DISTRICT COURT OF APPEALS' DECISION IN JOHNSON V. STATE AND THE THIRD DISTRICT COURT OF APPEALS' DECISION IN LAWTON V. STATE, AND IF SO, WHETHER THIS COURT SHOULD EXERCISE ITS DISCRETION TO ACCEPT JURISDICTION AND RESOLVE THE CONFLICT?

1. This Court has discretionary jurisdiction to review the First District Court of Appeals' decision in Van Teamer v. State.

Petitioner contends that this Court has jurisdiction pursuant to Fla. R. App. P. 9.030(a)(2)(A)(vi), which parallels Article V, § 3(b)(4), Fla. Const. The constitution provides:

The Supreme Court . . . [m]ay review any decision of a district court of appeal . . . that is certified by it to be in direct conflict with a decision of another district court of appeal.

Article V, § 3(b)(4), Fla. Const. Jurisdiction exists under this provision when the district court's decision uses the word "certify," or a variation thereof, and indicates which decision from another district court of appeal conflicts with its own. State v. Vickery, 961 So. 2d 309, 311 (Fla. 2007), quoting Harry Lee Anstead, Gerald Kogan, Thomas D. Hall, & Robert Craig Waters, The Operation and Jurisdiction of the Supreme Court of Florida, 29 Nova L.Rev. 431, 529 (2005).

In the instant case, the First District Court of Appeals' opinion stated that it certified conflict with the decision of the Third District Court of Appeals in Lawton v. State, 109 So.3d 825 (Fla. 3rd DCA 2013). (slip op. 4). This meets the requirements for certified direct conflict

jurisdiction, as it contains the word "certify" and indicates that the conflict lies with the Third District's decision in Lawton.

Accordingly, this Court has discretionary jurisdiction to review the First District's decision in the instant case.

2. This Court should exercise its discretion and accept jurisdiction.

The conflict between the decision in the instant case and the decision in Lawton centers on juvenile offenders sentenced to life for nonhomicide offenses. Specifically, the Third District held that Graham v. Florida, 130 S.Ct. 2011 (2010), which holds that juvenile offenders who solely commit nonhomicide offenses cannot be sentenced to life without parole, does not apply to juvenile offenders who were "convicted of both homicide and nonhomicide offenses which arose out of a single criminal episode." Lawton, 109 So.3d 825 at 829. In contrast, the First District held that juvenile offenders cannot be sentenced to life without parole for nonhomicide offenses even if they commit a homicide in the same criminal episode. (slip op. 3-4).

Consequently, the conflicting decisions have created different standards for sentencing juvenile offenders who commit both nonhomicide and homicide offenses during the same criminal episode within the State of Florida. Given that this conflict results in an uneven application of the law within the State of Florida, this Court should accept jurisdiction to resolve the conflict and ensure that the sentencing standards are once again uniform throughout the State of Florida.

CONCLUSION

Based on the foregoing discussions, the State respectfully requests this Honorable Court determine that it has jurisdiction and exercise its discretion to accept jurisdiction.

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to the following by electronic mail on May 30, 2013: David E. Johnson, DC# J15432, 76212 Nicholas Cutinna Rd., Yulee, FL 32097.

CERTIFICATE OF COMPLIANCE

I certify that this brief was computer generated using Courier New 12 point font.

Respectfully submitted and certified,  
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