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IN THE SUPREME COURT OF FLORIDA

ROBERT R. MILLER, :

Petitioner, :

VS. CASE NO. SC15-5
(LC NO. 1D13-5503)

STATE OF FLORIDA, :

Respondent. :

_____:

ON DISCRETIONARY REVIEW OF THE DECISION
OF THE FIRST DISTRICT COURT OF APPEAL

JURISDICTIONAL BRIEF OF PETITIONER

NANCY A. DANIELS
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

PAMELA D. PRESNELL
FLORIDA BAR NO: 0603708
Assistant Public Defender
Leon County Courthouse
301 South Monroe Street, Suite 401
Tallahassee, Florida 32301
(850) 606-8544
Pamela.presnell@flpd2.com
ATTORNEY FOR PETITIONER

TABLE OF CONTENTS

	PAGE
TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
I. STATEMENT OF THE CASE AND FACTS	1
II. SUMMARY OF ARGUMENT	2
III. ARGUMENT	3
THE COURT SHOULD ACCEPT THIS CASE TO PROMOTE UNIFORMITY OF DECISIONS	
IV. CONCLUSION	5
V. CERTIFICATE OF SERVICE	5
VI. CERTIFICATE OF FONT AND TYPE SIZE	6

TABLE OF AUTHORITIES

CASES **PAGE(s)**

Jollie v State, 405 So.2d 418 (Fla. 1981) 2, 3

The Florida Star v. B.J.F., 530 So.2d 286, 288, n.3 (Fla. 1988) 3

Miller v. State, 40 Fla. L. Weekly D39a, (Fla. 1st DCA December 18, 2014) 1

Walton v. State, 106 So.3d 522 (Fla. 1st DCA 2013) ... 1, 2, 3, 4

RULES

Rule 9.030(a)(2)(A)(iv), F.R.App.P 2

ARTICLES

Article V, § 3(b)(3), Florida Constitution 2

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JURISDICTIONAL BRIEF OF PETITIONER

I STATEMENT OF THE CASE AND FACTS

This is an appeal from the decision of the First District Court of Appeal, Miller v. State, 40 Fla. L. Weekly D39a, (Fla. 1st DCA December 18, 2014) (No. 1D13-5503).

The district court affirmed consecutive 10/20/life mandatory minimum sentences for kidnapping, aggravated battery, and possession of a firearm by a convicted felon, citing Walton v. State, 106 So.3d 522 (Fla. 1st DCA 2013)(*en banc; conflict certified)*, review granted, no. SC13-1652 (Fla. Apr. 3, 2014)(oral argument scheduled for March 5, 2015). Walton is pending review in this Court.

II SUMMARY OF THE ARGUMENT

Under Jollie v State, 405 So.2d 418 (Fla. 1981), the citation by the district court to a case pending a decision in this Court creates conflict jurisdiction under article V, § 3(b)(3), Florida Constitution, and Rule 9.030(a)(2)(A)(iv), Florida Rules of Appellate Procedure. Because this Court has accepted Walton, supra, for review, it should also accept this case for review, in order to promote uniformity of decisions and to serve the interests of justice.

III ARGUMENT

ISSUE PRESENTED

THE COURT SHOULD ACCEPT THIS CASE TO PROMOTE UNIFORMITY OF DECISIONS.

Petitioner, Robert R. Miller, was convicted at jury trial of kidnapping, aggravated battery, and possession of a firearm by a convicted felon. The First District Court affirmed, citing Walton, supra, which is pending review in this Court.

While the district court issued a written opinion in this case and not a "PCA cite," the grounds for review - that the case cited is pending review in this court - are the same as in the Jollie situation.

In Jollie v. State, 405 So.2d 418 (Fla. 1981), this Court recognized that a PCA cite, where the cited case is pending review in this Court, creates a type of discretionary conflict jurisdiction. Jollie recognized that a conflict existed, even where the district court did nothing more than per curiam affirm with a citation, as long as the cited case was pending in this Court. See also The Florida Star v. B.J.F., 530 So.2d 286, 288, n.3 (Fla. 1988), in which this Court said:

> There can be no actual conflict discernible in an opinion containing only a citation to other case law **unless one of the cases cited as controlling authority is pending before this Court**, or has been reversed on appeal or review, or receded from by this Court, or unless the citation explicitly notes a contrary holding of another district court or of this Court. See Jollie v. State, 405 So.2d 418, 420 (Fla. 1981). (emphasis added)

The corollary is that, when a case cited in the district court as controlling authority is pending before this Court, this Court has conflict jurisdiction.

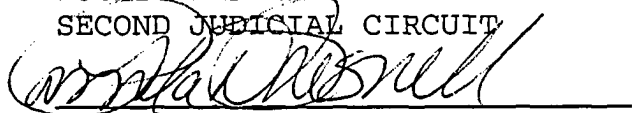
Walton is pending review in this Court, thus, this Court has jurisdiction. Because the district court has held the instant case involves the same issue as Walton, and Walton is pending review in this Court, petitioner requests that this Court review his case to promote uniformity of decisions.

IV CONCLUSION

Based upon the foregoing argument, reasoning, and citation of authority, petitioner requests that this Court exercise its discretion to accept jurisdiction of this case and order briefing on the merits.

Respectfully submitted,

NANCY A. DANIELS
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT



PAMELA D. PRESNELL
FLORIDA BAR NO:0603708
Assistant Public Defender
Leon County Courthouse
301 So. Monroe St., Suite 401
Tallahassee, Florida 32301
(850) 606-1000

ATTORNEY FOR PETITIONER

V CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by electronic mail, by agreement of the parties, to Brittany Ann Rhodaback, Office of the Attorney General, at crimapptlh@myfloridalegal.com, and by U.S. Mail to Robert Miller, DOC# J25430, Graceville Correctional Facility, 5168 Ezell Road, Graceville, Florida, 32440, on this 16th day of January, 2015.

VI CERTIFICATION OF FONT AND TYPE SIZE

This brief is typed in Courier New 12.

PAMELA D. PRESNELL