

IN THE SUPREME COURT OF FLORIDA

CASE NO. 66 929

THE STATE OF FLORIDA,

Petitioner,

vs.

CLEVE ANDREW MOBLEY,

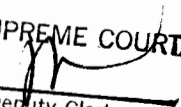
Respondent.

FILED

SID J. WHITE

APR 29 1985

CLERK, SUPREME COURT

By  Chief Deputy Clerk

ON PETITION FOR DISCRETIONARY REVIEW

BRIEF OF PETITIONER ON JURISDICTION

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OTHER AUTHORITY

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PRELIMINARY STATEMENT

The Petitioner was the appellee in the Fourth District Court of Appeal and the prosecution in the trial court. The Respondent was the appellant and the defendant, respectively, in those lower courts.

In the brief, the parties will be referred to as they appear before this Honorable Court.

The symbol "A" will be used to refer to Petitioner's Appendix, which is a conformed copy of the appellate court's opinion.

All emphasis has been added by Petitioner unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

On appeal, the Fourth District Court of Appeal affirmed the convictions, but vacated that aspect of the sentence retaining jurisdiction over a portion of the life sentence and remanded for restructuring the sentence to impose an appropriate period of retention over the sentence on Count II.

POINT INVOLVED

WHETHER PETITIONER PROPERLY INVOKES THE DISCRETIONARY JURISDICTION OF THIS HONORABLE COURT, AS THERE IS EXPRESS AND DIRECT CONFLICT BETWEEN A DECISION OF THE FIRST DISTRICT COURT OF APPEAL AND THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL ISSUED IN THE INSTANT CASE, WHICH HELD THAT TRIAL COUNSEL'S FAILURE TO OBJECT TO THE TRIAL COURT'S RETENTION OF JURISDICTION OVER A LIFE SENTENCE DOES NOT WAIVE APPEALABILITY OF THE SENTENCES?

SUMMARY OF ARGUMENT

The rule of law set forth in the instant case sets forth a rule of law contrary to the rule of law set forth in Cofield v. State, 453 So.2d 409 (Fla. 1st DCA 1984).

ARGUMENT

PETITIONER PROPERLY INVOKES THE DISCRETIONARY JURISDICTION OF THIS HONORABLE COURT, AS THERE IS EXPRESS AND DIRECT CONFLICT BETWEEN A DECISION OF THE FIRST DISTRICT COURT OF APPEAL AND THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL ISSUED IN THE INSTANT CASE, WHICH HELD THAT TRIAL COUNSEL'S FAILURE TO OBJECT TO THE TRIAL COURT'S RETENTION OF JURISDICTION OVER A LIFE SENTENCE DOES NOT WAIVE APPEALABILITY OF THE SENTENCE.

Petitioner seeks to establish this Court's "conflict" jurisdiction under Art. v §3(b)(3), Fla. Const. (1980) and Fla.R.App.P. 9.030(a)(2)(A)(iv). Conflict exists between the instant decision and the decision of the First District Court of Appeal in Cofield v. State, 453 So.2d 409 (Fla. 1st DCA 1984).

Conflict jurisdiction is properly invoked when a district court of appeal either (1) announces a rule of law which conflicts with a rule previously announced by the supreme court or another district, or (2) applies a rule of law to produce a different result in a case which involves substantially the same facts as another case. Mancini v. State, 312 So.2d 732, 733 (Fla. 1975). The court below has created conflict by announcing a rule of law contrary to that announced in Cofield v. State, supra.

In Cofield, the First District Court of Appeal

held:

We therefore conclude that Cofield's failure to make any objection to the court's retention of jurisdiction over one-half of his consecutive life sentences precludes him from challenging such retention by direct appeal.

450 So.2d at 410.

The Fourth District Court of Appeal, in its opinion in the instant case stated:

In reaching the conclusion that this matter is appealable we necessarily create conflict with the first district's Cofield case. . .

(A 1 at p. 2).

thereby creating conflict with a rule previously announced by another district court.

Since the opinion in the instant case announces a rule of law contrary to the rule of law set forth in Cofield, supra, this Honorable Court has discretionary jurisdiction to hear this case.

Further, this issue is a recurring legal problem, and this Honorable Court needs to resolve the issue so that appellate and trial courts will have a well-defined and workable rule of law to guide them. Petitioner therefore respectfully requests this Honorable Court accept jurisdiction in this case.

CONCLUSION

WHEREFORE, based on the foregoing reasons and authorities cited therein, Petitioner respectfully requests this Honorable Court accept discretionary jurisdiction in the instant case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Petitioner's Brief on Jurisdiction has been furnished, by courier to: LARRY DUFFY, Assistant Public Defender, W. Palm Beach, FL 33401, this 26th day of April, 1985.

Georgina Jimenez-Orosa
OF COUNSEL