

5-1-87

IN THE SUPREME COURT OF FLORIDA

JAMES A. MAYS,  
Petitioner,  
v.  
STATE OF FLORIDA,  
Respondent.

APPELLATE COURT  
CLERK  
CASE NO.   
APPELLATE CASE NO. 4-86-0617

70,330

PETITIONER'S BRIEF ON JURISDICTION

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PRELIMINARY STATEMENT

Petitioner was appellant and the defendant and Respondent was the appellee and the prosecution in the Criminal Division of the Circuit Court of the Nineteenth Judicial Circuit, in and for Martin County, Florida. In the brief, the parties will be referred to as they appear before this Honorable Court of Appeal.

The following symbol will be used:

"A"                      Appendix

STATEMENT OF THE CASE AND FACTS

On October 29, 1985, Petitioner, JAMES MAYS, was charged with armed robbery. The jury found Petitioner guilty of "robbery with a firearm or other deadly weapon" (A3). On February 26, 1986, Petitioner was sentenced to nine (9) years in prison with a three (3) year mandatory minimum pursuant to § 775.087(2), Fla. Stat. (1985) (A4). Two hundred (200) dollar costs were imposed pursuant to § 27.3455, Fla. Stat. (1985) (A5). A certificate was filed certifying that Petitioner was not to receive gain time as a result of his failure to pay the \$200 costs (A6). Petitioner appealed his conviction and sentence. On February 25, 1987, the Fourth District Court of Appeal affirmed Petitioner's conviction and sentence (A1-2). On March 27, 1987, Petitioner filed a notice to invoke this Court's discretionary jurisdiction.

### SUMMARY OF THE ARGUMENT

The district court held that a defendant need not be given notice, and a full opportunity to object, prior to imposition of costs under section 27.3455, Florida Statutes (1985). As recognized by the district court, this holding directly and expressly conflicts with Hughes v. State, 497 So.2d 930 (Fla. 1st DCA 1986) and Gaffney v. State, 497 So.2d 1292 (Fla. 5th DCA 1986). Consequently, this Court has jurisdiction to review the instant case.

ARGUMENT

POINT INVOLVED

THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL EXPRESSLY AND DIRECTLY CONFLICTS WITH A DECISION OF ANOTHER DISTRICT COURT OF APPEAL.

Petitioner invoked this Court's "conflict" jurisdiction under Article V, § 3(b)(3), Florida Constitution (1980) and Fla.R.Crim.P. 9.030(a)(2)(iv). Said rule provides that review may be sought of "decisions of district courts of appeal that: (iv) expressly and directly conflicts with a decision of another district court of appeal or of the Supreme Court on the same question of law."

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; or (3) misapplies precedent. Mancini v. State, 312 So.2d 732, 733 (Fla. 1975); McBurnette v. Playground Equipment Corp., 137 So.2d 563 (Fla. 1962).

In the present case the district court decided that a defendant need not be given notice, and a full opportunity to object, prior to the imposition of costs under section 27.3455, Florida Statutes (1985) (A2). This rule of law is in direct and express conflict with Hughes v. State, 497 So.2d 938 (Fla. 1st DCA 1986) and Gaffney v. State, 497 So.2d 1292 (Fla. 5th DCA 1986) which hold that notice and an opportunity to object must be given prior to the imposition of costs pursuant to § 27.3455. The district

court expressly recognized that its decision conflicts with Hughes and Gaffney (A2). Thus, this Court has the authority to review this case.



CONCLUSION

In the exercise of its certiorari jurisdiction, This Court may and should review the decision of the district court of appeal.

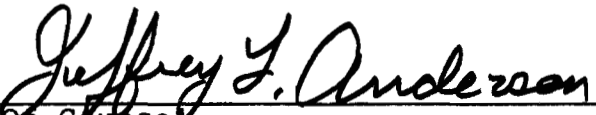
Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to AMY LYNN DIEM, Assistant Attorney General, Elisha Newton Dimick Building, Suite 204, 111 Georgia Avenue, West Palm Beach, Florida, 33401 by courier this 6th day of April, 1987.

  
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of Counsel