

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,  
Petitioner,  
v.  
ROGER DALE GORDON,  
Respondent.

---

FILED  
MAY 11 1988

CASE NO. 71,221

SUPREME COURT  
CLERK

PETITIONER'S REPLY BRIEF

ROBERT A. BUTTERWORTH  
ATTORNEY GENERAL

BELLE B. TURNER  
ASSISTANT ATTORNEY GENERAL  
125 N. Ridgewood Avenue  
Fourth Floor  
Daytona Beach, FL 32014  
(904) 252-1067

COUNSEL FOR PETITIONER

TOPICAL INDEX

PAGE(S)

AUTHORITIES CITED.....ii

SUMMARY OF ARGUMENT.....1

ARGUMENT

IN REPLY TO RESPONDENT'S CLAIM THAT  
CONFLICT NO LONGER EXISTS AS A BASIS  
FOR JURISDICTION.....2

CONCLUSION.....3

CERTIFICATE OF SERVICE.....3

AUTHORITIES CITED

<u>CASE(S)</u>	<u>PAGE(S)</u>
<u>Francis v. State,</u> 487 So.2d 348 (Fla. 2d DCA 1986).....	2,3
<u>State v. Mestas,</u> 501 So.2d 587 (Fla. 1987).....	3

SUMMARY OF ARGUMENT

Despite respondent's contention to the contrary, this court's decision in State v. Mestas, infra, resolved an issue unrelated to the issue presented here. Nothing in Mestas disturbs Francis v. State, infra. Therefore, this court has conflict jurisdiction.

ARGUMENT

IN REPLY TO RESPONDENT'S CLAIM THAT  
CONFLICT NO LONGER EXISTS AS A BASIS  
FOR JURISDICTION.

Respondent contends that this Court should revisit its decision to consider this case, relying on a case cited in the petitioner's brief on the merits, State v. Mestas, 501 So.2d 587 (Fla. 1987). "(I)t appears that this court's decision in State v. Mestas, supra, has implicitly overruled Francis, supra," (Respondent's Brief on the Merits, p.5). Petitioner contends that a fair reading of the decision below and Francis v. State, 487 So.2d 348 (Fla. 2d DCA 1986) demonstrates irreconcilable conflict.

Mestas did not overrule Francis explicitly or implicitly; the issues involved were not the same. In Mestas, the issue was whether community control was a permissible **first** cell disposition. Francis concerned the propriety of a **second** cell sentence combining both incarceration in state prison and community control. In direct conflict with the decision in this case, the second district allowed such a combination.

The rule of law announced in Francis as well as the application of that rule is diametrically opposed to the rule applied by the fifth district in this and other cases. This honorable court should reach the merits of this issue to resolve this irreconcilable conflict of law in the district courts of this state.

CONCLUSION

Based on the arguments and authorities presented herein, petitioner respectfully prays this honorable court reverse the decision of the District Court of Appeal of the State of Florida, Fifth District.

Respectfully submitted,

ROBERT A. BUTTERWORTH  
ATTORNEY GENERAL

*Belle B. Turner*

BELLE B. TURNER  
ASSISTANT ATTORNEY GENERAL  
125 N. Ridgewood Avenue  
Fourth Floor  
Daytona Beach, FL 32014  
(904) 252-1067

COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing Reply Brief has been furnished by delivery to Daniel J. Schafer, Assistant Public Defender for appellant, 112 Orange Avenue, Suite A, Daytona Beach, Florida this 8th day of March, 1987.

*Belle B. Turner*

Belle B. Turner  
Assistant Attorney General