

THE SUPREME COURT OF FLORIDA

CASE NO.

THE STATE OF FLORIDA,

Petitioner,

vs.

ABRAHAM JOHNSON,

Respondent.

13013

FILED
 SID J. WHITE
 FEB 20 1989
 CLERK, SUPREME COURT
 By [Signature]
 Deputy Clerk

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ON PETITION FOR WRIT OF CERTIORARI TO THE
DISTRICT COURT OF APPEAL OF FLORIDA,
THIRD DISTRICT

* * * * *

BRIEF OF PETITIONER ON JURISDICTION

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STATEMENT OF THE CASE AND FACTS

On November 15, 1982, the Circuit Court for the Eleventh Judicial Circuit of Florida imposed on the respondent, for Manslaughter, a sentence pursuant to the Youthful Offender Act, Ch. 958, Fla. Stats. (1979), of four years imprisonment followed by two years community control. Upon resentencing for violating the community control portion of the sentence, the Circuit Court imposed a sentence of 10 years incarceration followed by two years probation under the Sentencing Guidelines, Fla. R. Crim. P. 3.701 and 3.988.

QUES ED

WHETHER THIS COURT HAS AUTHORITY
TO REVIEW THE THIRD DISTRICT COURT OF
APPEALS DECISION REVERSING THE
STATE SUPREME COURT'S DECISION ON THE
ISSUE OF THE AND DIRECT CONFLICT
WITH POORE V. STATE, 531 SO.2d 161
(FLA. 1988)?

SUMMARY OF THE ARGUMENT

The decision of the District Court of Appeal of Florida, Third District, in the instant cases is in direct conflict with this Court's decision in Poore v. State, 531 So.2d 161 (Fla. 1988) because both of the cases involved the same controlling factual elements and resolved the same question of law, but the Third District's opinion reached a contradictory result.

ARGUMENT

THIS COURT HAS JURISDICTION TO REVIEW THE INSTANT CASE BECAUSE THE THIRD DISTRICT COURT OF APPEALS DECISION IS IN DIRECT CONFLICT WITH THIS COURT'S DECISION IN POORE V. STATE, 531 So.2d 161 (FLA. 1988) ON THE SAME POINT OF LAW.

Florida Rules of Appellate Procedure 9.030(a)(2)(a)(iv) provides that this Court's discretionary jurisdiction may be sought to review a decision of a district court of appeal which expressly and directly conflicts with a decision of this court on the same question of law. A district court opinion is in express and direct conflict when it announces a rule of law which conflicts with a rule previously announced by this Court. Mancini v. State, 312 So.2d 732, 733 (Fla. 1975). The Third District Court's decision in the instant case directly conflicts with this Court's decision in Poore v. State, 531 So.2d 161 (Fla. 1988) because it announced a rule of law governing resentencing when an offender violated his Youthful Offender Act sentence which conflicts with the one previously announced in Poore.

On November 29, 1988, after this Court's Poore decision was rendered, the Third District filed a per curiam opinion in the instant case reversing and remanding the appellant's sentence on the authority of Miles v. State, ___ So.2d ___ (Fla. 3 DCA Case No. 87-461, opin. filed November 8, 1988) 13 F.L.W. 2460. The Miles decision held without discussion that the maximum sentence a court may impose

after revocation of a youthful offender's probation or community control is six years incarceration pursuant to **§958.14**, Fla. Stat. (1987). Id.

In apposite, Poore had announced that the sentence that may be imposed after a youthful offender's probation or community control violation depends upon which of five sentencing types was used in the original sentence. Poore, 531 So.2d at 164. Poore requires an analysis of the substance of the sentence. The instant Third District decision on the other hand, exalts the form of the sentence; if it was originally a Youthful Offender Act sentence, then the six-year sentencing cap is automatically invoked.

The statute, **§958.14**, Fla. Stat. (1985), does not require a Circuit Court to maintain a defendant's Youthful Offender Act status after he violates the community control portion of his Youthful Offender Act status. It is, therefore, not the statute that justifies the Third District's decision not to follow Poore. In the Poore decision Poore was classified a youthful offender and sentenced on September 9, 1982 to four-and-one-half years in the Department of Corrections. However, the trial court directed that petitioner would be confined for two-and-one-half years, with the remainder of the sentence suspended. Poore, supra. During the suspended portion, petitioner would be on probation; a "true split sentence."

In 1985, petitioner pled guilty to a probation violation and elected to be resentenced under the new sentencing guidelines. The trial court imposed a sentence of incarceration for four-and-one-half years with credit for time served and gave written reasons for departing from the guidelines. supra.

(The Poore decision likewise post-dated the statute). This Court announced that the cumulative incarceration imposed after violation of the community control portion of a youthful offender act sentence always will be subject to any limitations imposed by the sentencing guidelines. Poore, at 165.

If permitted to stand, the instant Third District decision would be out of harmony with this Court's prior decision on the same question of laws, thereby generating confusion and instability among the precedents. See Kyle v. Kyle, 139 So.2d 885 (Fla. 1962).

CONCLUSION

Based upon the foregoing argument and citation of authorities, this Court has jurisdiction to review and correct the decision of the Third District Court, and the Petitioner urges that this petition for writ of certiorari be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **PETITIONER'S BRIEF ON JURISDICTION** was furnished by mail to **BRUCE A. ROSENTHAL**, Assistant Public Defender, 1351 N.W. 12th Street, Miami, Florida 33125, on this 16th day of February, 1989.



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