

IN THE SUPREME COURT OF FLORIDA

CASE NO.: 74,209
(4th DCA 88-0390)

JOSEPH D'ANGELO,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

FILED
MAY 23 1989
C
jph

PETITION TO INVOKE THE DISCRETIONARY JURISDICTION
OF THE SUPREME COURT OF FLORIDA
TO REVIEW A DECISION OF THE DISTRICT COURT OF
APPEAL OF FLORIDA, FOURTH DISTRICT

PETITIONER'S BRIEF ON JURISDICTION

DANIEL S. CARUSI, P.A.
517 Southwest First Avenue
Fort Lauderdale, Florida 33301
Phone: (305) 527-0101

By: Daniel S. Carusi
Daniel S. Carusi

TABLE OF CONTENTS

	<u>Page</u>
Table of Authorities	ii
Summary Statement of the Case and Facts	1
Express and Direct Conflict	2
Conclusion	4
Certificate of Service	5
Appendix	6

TABLE OF AUTHORITIES

<u>Cases:</u>	<u>Page</u>
<u>Collins v. State,</u> 535 So.2d 661 (Fla. 3d DCA 1988)	2
<u>State v. Fletcher,</u> 530 So.2d 296 (Fla. 1988)	3,4

Rules:

Fla. R. App. P. 9.030 (a)(2)(A)(iv)	2
Fla. R. App. P. 9.120	2

SUMMARY STATEMENT OF THE CASE AND FACTS

On March 10, 1986, the Petitioner, JOSEPH D'ANGELO and three others not parties to this Petition were arrested in Broward County and charged with trafficking in cocaine and conspiracy to traffic in cocaine.

On November 13, 1987, a jury found MR. D'ANGELO guilty as charged.

The trial court adjudged defendant guilty and deferred imposition of sentence pending the State's motion to aggravate sentence.

On January 13, 1988, at the conclusion of a sentencing hearing, the trial court imposed the thirty-year maximum sentence against MR. D'ANGELO. The trial court's written reasons for departure were as follows:

1. The Defendant delivered more than five thousand (5000) grams of cocaine to undercover detectives. That amount of cocaine is twelve and one-half (12 1/2) times the minimum amount required for the invocation of a fifteen (15) year mandatory minimum prison sentence.
2. The Defendant and his co-defendants conducted a well organized, well planned scheme to consummate the delivery of five kilograms of cocaine in this case. Each co-defendant had a role to play to ensure the success of the delivery.
3. The effects of distributing five thousand (5000) grams of cocaine create's dangerous societal and communital results for numerous unknown and unseen victims.

On July 22, 1988, MR. D'ANGELO filed his appeal, seeking a reversal of his conviction on double jeopardy grounds and a reversal of his departure sentence.

On March 29, 1989, the Fourth District Court of Appeal entered an Order affirming MR. D'ANGELO'S conviction but reversed the sentence and remanded the cause for resentencing. (Appendix p.1-2)

On April 11, 1989, MR. D'ANGELO filed his motion for rehearing and for rehearing en banc.

On May 4, 1989, the Fourth District Court of Appeal entered an Order denying MR. D'ANGELO'S motion. (Appendix p.3)

On May 18, 1989, MR. D'ANGELO filed his Notice to Invoke Discretionary Jurisdiction. This brief on jurisdiction pursuant to Fla. R. App. P. 9.120(d) follows.

EXPRESS AND DIRECT CONFLICT

The Fourth District Court of Appeal's March 29, 1989, decision remanding the cause to the trial court for resentencing expressly and directly conflicts with decisions of the Florida Supreme Court as well as decisions of other district courts of appeal. See Fla. R. App. P. 9.030(a)(2)(A)(iv).

In Collins v. State, 535 So.2d 661 (Fla. 3d DCA 1988), the trial court imposed a twenty-one year sentence for two judgments of conviction for trafficking in cocaine and possession of cannabis. The second written reason given by the trial court for departing from the sentencing guidelines was:

"(2) Executing the crimes in a professional manner. See Dickey v. State, 458 So.2d 1156 (Fla. 1st DCA 1984). The packaging, use of small envelopes, locked trunk support a conclusion of professional execution."

Collins, 535 So.2d at 662.

In remanding the cause back to the trial court for resentencing within the guidelines, the Third District Court of

Appeal held:

"The second reason, stated above, is not a clear and convincing reason for departing from the sentencing guidelines because the stated reason is an inherent component of the crime of trafficking in cocaine. Indeed, the state concedes that this was an invalid reason for the subject departure. See State v. Cote, 487 So.2d 1039, 1039 (Fla. 1986); Chirino v. State, 516 So.2d 1117 (Fla. 2d DCA 1987); Banks v. State, 509 So.2d 1320, 1321-22 (Fla. 5th DCA 1987)."

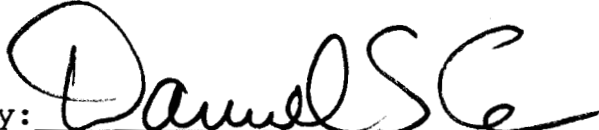
In State v. Fletcher, 530 So.2d 296 (Fla. 1988), the defendant was convicted of trafficking and conspiracy to traffic in cannabis. The trial court imposed a departure sentence. The third departure reason was "[t]hat the defendant planned and calculated the crime with sophistication and well organized premeditation including 'months of plotting and scheming.'" Id. at 297. The Supreme Court in Fletcher held that planning and premeditation are inherent in all major trafficking and conspiracy to traffic drug cases and thus is not a valid basis for departure. Id. at 297.

In the instant case, MR. D'ANGELO'S thirty-year departure sentence was based on three grounds, two of which were held invalid by the Fourth District Court of Appeals in its panel opinion - the quantity of drugs involved, and the effect of the distribution of large amounts of drugs on society. The third ground, that the crime was committed in a well organized and professional manner was upheld as a valid reason for departure. The opinion of the Fourth District Court of Appeal expressly and directly conflicts with the cases cited herein.

Conclusion

Based on the foregoing, it is respectfully submitted there is an express and direct conflict between the decision of the Fourth District Court of Appeal holding the fact that the crime was committed in a well organized and professional manner is a valid basis for departure and decisions of the Florida Supreme Court and decisions of other district courts of appeal. This Court should accept jurisdiction of the matter to maintain uniformity of decisions among the district courts of appeal and to ensure that the Fourth District Court of Appeal follows this Court's holding in State v. Fletcher, 530 So.2d 296 (Fla. 1988).

DANIEL S. CARUSI, P.A.
517 Southwest First Avenue
Fort Lauderdale, Florida 33301
Phone: (305) 527-0101

By: 
Daniel S. Carusi

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed on this 25th day of May, 1989, to: Celia Terenzio, Esq., Assistant Attorney General Palm Beach County Regional Service Center, Room 204, 111 Georgia Avenue, West Palm Beach, Fl. 33401.



Daniel S. Carusi

**APPENDIX TO PETITIONER'S
BRIEF ON JURISDICTION**