

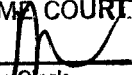
FILED

SID J. WHITE

JUN 10 1991

IN THE SUPREME COURT OF FLORIDA

CLERK, SUPREME COURT

By 
Chief Deputy Clerk

STATE OF FLORIDA,

Petitioner,

v.

CASE NO. 78085
5th DCA 90-759

JO ANN CAMP,

Respondent.

JURISDICTIONAL BRIEF OF PETITIONER

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TABLE OF CONTENTS

PAGES:

TABLE OF AUTHORITIES.....ii

STATEMENT OF CASE AND FACTS.....1

SUMMARY OF ARGUMENT.....3

ARGUMENT.....4

THIS COURT HAS JURISDICTION BECAUSE
THE DECISION BELOW DIRECTLY AND
EXPRESSLY CONFLICTS WITH THE
DECISION OF ANOTHER DISTRICT COURT
OF APPEAL.....4

CONCLUSION.....7

CERTIFICATE OF SERVICE.....7

TABLE OF AUTHORITIES

CASES:

PAGES:

Dixon v. State,
541 So.2d 637 (Fla. 1st DCA 1989).....1, 3-5, 7

Ford Motor Company v. Kikis,
401 So.2d 1341 (Fla. 1981).....4

Grimes v. State,
477 So.2d 649 (Fla. 1st DCA 1985).....3, 5

State v. Camp,
case no. 90-759,
(Fla. 5th DCA April 25, 1991).....4

State v. Clark,
case no. 90-759,
(Fla. 5th DCA April 25, 1991).....1

The Florida Star v. B.J.F.,
530 So.2d 286 (Fla. 1988).....4

OTHER AUTHORITIES

Fla.R.App.P. 9.120(d).....2

STATEMENT OF CASE AND FACTS

The material facts were set out in the opinion below:

Jo Ann Camp, while employed as a bookkeeper by Brightwater Pools, Inc., improperly obtained or used company checks for her own use. She either forged her employer's signature or improperly used blank checks pre-signed by him. She was ultimately caught.

The State charged her with 36 counts of forgery, 36 counts of uttering a forgery and 42 counts of dealing in stolen property. The trial court dismissed all counts alleging that Camp was dealing in stolen property. The State appeals. We affirm.

State v. Clark, case no. 90-759, slip op. (Fla. 5th DCA April 25, 1991). See (A).¹

After the decision was rendered affirming the trial court order dismissing the dealing in stolen property counts, the state filed alternative motions for rehearing or for certification of express and direct conflict between this case and *Dixon v. State*, 541 So.2d 637 (Fla. 1st DCA 1989). See (B). In the motion for rehearing the state argued that the court had overlooked established rules of statutory construction by not construing the penal statute to the letter. The motion pointed out that the statute was unambiguous and that by its terms it is not simply an anti-fencing statute, as the court's interpretation of the legislative history led it to conclude. In the motion for certification of conflict it was pointed out that the decision

¹ The documents contained in the contemporaneously filed appendix are referred to by their letter designation.

was directly and expressly contrary to the *Dixon* decision. No response to either motion was filed by the appellee.

On June 3, 1991 the court below denied both the motion for rehearing and the motion for certification of direct and express conflict with *Dixon* (C).

On June 6, 1991, the state filed a "Motion to Stay Issuance of Mandate" (D). The "Notice Invoking Discretionary Jurisdiction" was also filed yesterday (E).

In accordance with Fla.R.App.P. 9.120(d), this timely jurisdictional brief follows.

SUMMARY OF ARGUMENT

The decision rendered by the Fifth District Court of Appeal in the instant case expressly and directly conflicts with the decision of the First District Court of Appeal in *Dixon v. State*, 541 So.2d 637 (Fla. 1st DCA 1989). The *Dixon* court held that passing forged, stolen checks amounted to dealing in stolen property. The court rejected the argument that the passing of the stolen checks merely amounted to "personal use", such as it had held regarding the passing of stolen food stamps in *Grimes v. State*, 477 So.2d 649 (Fla. 1st DCA 1985), because the checks were placed "in the stream of commerce." *Dixon*, 638.. In the decision below the Fifth District Court of Appeal acknowledged that Camp had placed the stolen checks into the stream of commerce, but nonetheless held that such conduct did not constitute dealing in stolen property. The court explicitly relied upon the "'personal use' analysis in *Grimes v. State*, 477 So.2d 649 (Fla. 1st DCA 1985), and the dissent in *Dixon v. State*, 541 So.2d 637 (Fla. 1st DCA 1989)." Slip op., at 3.

ARGUMENT

THIS COURT HAS JURISDICTION BECAUSE
THE DECISION BELOW DIRECTLY AND
EXPRESSLY CONFLICTS WITH THE
DECISION OF ANOTHER DISTRICT COURT
OF APPEAL.

A "discussion[] of the legal principles which the court applied supplies a sufficient basis for a petition for conflict review." *Ford Motor Company v. Kikis*, 401 So.2d 1341, 1342 (Fla. 1981); see also *The Florida Star v. B.J.F.*, 530 So.2d 286 (Fla. 1988). Although the court below denied the motion to certify conflict, this court has jurisdiction because the express and direct conflict with *Dixon v. State*, 541 So.2d 637 (Fla. 1st DCA 1989), "appear[s] within the majority decision" rendered in this case.

The First District Court of Appeal held in *Dixon* that a defendant who forges and cashes a stolen check is properly convicted of dealing in stolen property. The Fifth District Court of Appeal in the decision below, *State v. Camp*, case no. 90-759, slip op. (Fla. 5th DCA April 25, 1991), held that the appellant, who had passed stolen, forged checks at various banks could not be convicted of dealing in stolen property. A mere "statement or citation in the opinion that hypothetically could create conflict if there were another opinion reaching a contrary result" is sufficient for this court to possess subject matter jurisdiction. *The Florida Star*, *supra*, 288. The conflict between this case and *Dixon* extends far beyond this threshold requirement.

The opinion below directly refers to and contrasts the legal analysis in *Dixon*. For example, in summarizing the state's argument, the court said:

The State relies on *Dixon v. State*, 541 So.2d 637 (Fla. 1st DCA 1989) for the proposition that a thief who puts stolen property into the stream of commerce is guilty of dealing in stolen property. Clearly Camp, by negotiating checks at various banks, did that in the case at bar."

Slip op., at 2.

The concluding paragraph contained in relevant part for purposes of this proceeding the following:

While one who steals with the intention of dealing through a fence, and does so, might well violate this provision, one who steals for his own account, so to speak, does not. This is consistent with the "personal use" analysis in *Grimes v. State*, 477 So.2d 649 (Fla. 1st DCA 1985), and the *dissent* in *Dixon v. State*, 541 So.2d 637 (Fla. 1st DCA 1989).

Slip op. at 3 (emphasis added).

The *Dixon* court rejected the argument that the "personal use" cases, including *Grimes* specifically, applied to one who forged and cashed stolen checks. The material passage in the decision follows:

Checks, on being cashed, are placed within the stream of commerce and they may be routed through several banks before reaching an ultimate destination. The ripple effect of a stolen, forged check may go beyond the original transfer, as the bogus instrument is subject to continued circulation. The stolen checks in this case thus differ significantly from the food stamps in *Grimes*. Additionally, cashing a check does not convert it into its ultimate, tangible form. It converts it into another intangible, money, which must be further traded.

In this respect, cashing a stolen check for money is no different from any other sale of stolen goods where money is given in payment. We find no basis for application of the "personal use" cases here.

Id., 638.


Not only do the diametrically opposed analyses and conclusions show express and direct conflict on the legal question whether one who passes forged, stolen checks can be convicted of dealing in stolen property, but the explicit reliance of the court below upon the dissent in *Dixon* shows that express and direct conflict is irrefutable. In short, this court has jurisdiction.

CONCLUSION

This court has jurisdiction because there is express and direct conflict between the decision below and *Dixon v. State*, 541 So.2d 637 (Fla. 1st DCA 1989).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to F. Wesley Blankner, Esq., 217 E. Ivanhoe Blvd., N., Orlando, FL 32804, by mail delivery on this 7th day of June, 1991.



DAVID S. MORGAN
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