

FILED

SID J. WHITE

JUL 11 1991

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

IN THE SUPREME COURT OF THE STATE OF FLORIDA

STATE OF FLORIDA,

Petitioner,

vs.

DONALD WALKER,

Respondent.

CASE NO. 78,193

RESPONDENT'S BRIEF ON JURISDICTION

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PRELIMINARY STATEMENT

Petitioner, the State of Florida, was the Appellee in the Fourth District Court of Appeal and the prosecution in the Criminal Division of the Circuit Court of the Seventeenth Judicial Circuit, in and for Broward County, Florida. Respondent, Donald Walker, was the appellant in the appellate court and the defendant in the trial court. In the brief, the parties will be referred to as they appear before this Court.

STATEMENT OF THE CASE AND FACTS

Respondent rejects Petitioner's statement of the case and facts, which refers to matters which do not appear on the face of the decision of the Fourth District Court of Appeal in this cause. Respondent agrees that his conviction for second degree murder with a firearm was enhanced to a life felony by operation of Section 775.087(1)(a), Fla. Stat. The Fourth District Court of Appeal held that, "Under the plain language of the [habitual offender] statute, only first degree felonies -- not those which are already made life felonies -- can be enhanced under section 775.084(4)(b)(1)." The habitual offender sentence imposed against Respondent was therefore reversed and this cause remanded for resentencing. This result was in complete accord with Johnson v. State, 568 So.2d 519 (Fla. 1st DCA 1990), a case directly on point and cited as controlling authority by the Fourth District Court of Appeal below.

SUMMARY OF THE ARGUMENT

This Court does not have jurisdiction to review the decision of the Fourth District Court of Appeal in the instant cause, which does not directly and expressly conflict with any other case nor construe the constitutionality of a statute.

ARGUMENT

THIS COURT DOES NOT HAVE JURISDICTION TO
REVIEW THE DECISION OF THE FOURTH DISTRICT
COURT OF APPEAL IN THE PRESENT CASE.

Petitioner argues that this Court has jurisdiction because the decision below "inherently" construes the constitutionality of the habitual offender statute, Section 775.084, Fla. Stat.¹ Since the constitutionality of the statute is not mentioned in the district court of appeal's decision, and the only case cited by the court is directly on point and in conformity with the court's own decision, Petitioner has failed to demonstrate that this Court has jurisdiction.

Article V, Section 3(b)(3) of the Florida Constitution provides that this Court has discretionary jurisdiction to review

any decision of a district court of appeal that expressly declares valid a state statute, or that expressly construes a provision of the state or federal constitution, or that expressly affects a class of constitutional or state officers, or that expressly and directly conflicts with a decision of another district court of appeal of the supreme court on the same question of law.

There is simply no constitutional authority for this Court to accept jurisdiction of an appeal on the basis that the decision of the lower appellate court "inherently" declared a statute valid or that "inherently" construed a provision of the state or federal constitution. Yet such an "inherent" constitutional construction

¹ Respondent notes that Petitioner's notice to invoke the discretionary review jurisdiction of this Court recites that the basis for jurisdiction is the direct and express conflict between the decision of the Fourth District Court of Appeal below and the decisions of this Court and other district courts of appeal on the same question of law.

is the sole grounds for jurisdiction urged by Petitioner, Petitioner's brief at page 3, since the decision of the Fourth District Court of Appeal in the present case makes absolutely no mention of any constitutional challenge to the habitual offender statute or of any other attack on the validity of the statute. This Court is thus patently without jurisdiction to review the decision below.

Furthermore, Petitioner's suggestion that the district court's interpretation of the habitual offender statute "could create conflict if there were another opinion reaching a contrary result," Petitioner's brief at page 4, is likewise insufficient to vest this Court with even the slightest shred of jurisdiction. Obviously, virtually any appellate decision would result in conflict if some other decision reaching a contrary result were at some future date rendered. Accepting Petitioner's interpretation of this Court's jurisdiction would result in authorizing review of almost every district court decision. Such a broad jurisdictional grant would be in direct contravention of the intent to limit jurisdiction which gave rise to the constitutional revision of 1980. Jenkins v. State, 385 So.2d 1356 (Fla. 1980). By its express language, the constitution authorizes this Court to act only where there is conflict between cases which are in existence at the time review is sought. Even Petitioner does not suggest that this is the case in the present action. Indeed, the only case cited by the Fourth District Court of Appeal is directly on point and is followed by the appellate court below. Johnson v. State, 568 So.2d 519 (Fla. 1st DCA 1990).

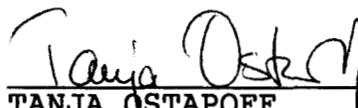
Petitioner has thus wholly failed to establish that any basis exists for its invocation of this Court's discretionary jurisdiction. Petitioner's attempt to invoke this Court's jurisdiction must, therefore, be denied.

CONCLUSION

Based on the foregoing argument and the authorities cited, Respondent requests that this Court DENY discretionary jurisdiction in the instant case.

Respectfully submitted,

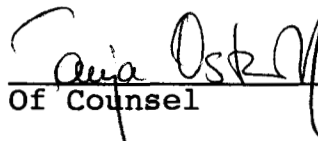
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to GEORGINA JIMENEZ-OROSA, Assistant Attorney General, Elisha Newton Dimick Building, Suite 204, 111 Georgia Avenue, West Palm Beach, Florida 33401, by courier this 9th day of JULY, 1991.


Of Counsel