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IN THE SUPREME COURT OF FLORIDA

ANTONIO TROUTMAN,

Petitioner,

v.

CASE NO. 80,495

STATE OF FLORIDA,

Respondent.

_____ /

RESPONDENT'S BRIEF ON JURISDICTION

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RESPONDENT'S BRIEF ON JURISDICTION

PRELIMINARY STATEMENT

Petitioner, ANTONIO TROUTMAN, was the defendant in the trial court and will be referred to herein as "Petitioner." Respondent, the State of Florida, was the prosecuting authority in the trial court and will be referred to herein as "the State." References to the decision of the First District Court of Appeal, which is contained in Appendix A of Petitioner's brief and is cited at Troutman v. State, 17 F.L.W. D1851 (Fla. 1st DCA July 29, 1992), shall be by the use of the symbol "A" followed by the appropriate page number(s).

JURISDICTIONAL STATEMENT

Article V, section 3(b)(3) of the Florida Constitution states, in pertinent part, the following:

The supreme court . . . [may] review any decision of a district court of appeal . . . that expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law.

The conflict between decisions "must appear within the four corners of the majority decision," and "[n]either a dissenting opinion nor the record itself can be used to establish jurisdiction." Reaves v. State, 485 So.2d 829, 830 (Fla. 1986). Neither will a concurring opinion support jurisdiction under section 3(b)(3). Jenkins v. State, 385 So.2d 1356, 1359 (Fla. 1980). In addition, it is the "conflict of decisions, not conflict of opinions or reasons that supplies jurisdiction for review by certiorari." Id., at 1359.

STATEMENT OF THE CASE AND FACTS

The State accepts Petitioner's statement of the case and facts as reasonably accurate.

SUMMARY OF ARGUMENT

Contrary to Petitioner's assertion, the decision in the instant case does not expressly and directly conflict with a decision from this Court or with decisions from the other district courts of appeal on the same question of law. Petitioner has cited ten cases in his brief on jurisdiction. However, only four of those cases involve the same statute dealt with in the instant case, and none of the cases involve the factual question of whether a trial court's written order sufficiently details its findings and reasons for imposing adult sanctions.

ARGUMENT

ISSUE

THE DECISION OF THE FIRST DISTRICT COURT OF APPEAL IN THIS CASE IS NOT IN EXPRESS AND DIRECT CONFLICT WITH PRIOR DECISIONS OF THIS COURT OR THE OTHER DISTRICT COURTS OF APPEAL.

As a preliminary matter, the State points out that Petitioner has filed a merits brief masquerading as a jurisdictional brief.

Petitioner has cited ten cases in his brief on jurisdiction. Apparently, he claims that all ten cases are in direct conflict with the decision rendered by the First District Court of Appeal in Troutman v. State, 17 F.L.W. D1851 (Fla. 1st DCA July 29, 1992). However, only four of those cases center on Section 39.059(7)(c) & (d), Florida Statutes (1991), as does the instant case. Petitioner contends that the decision in the instant case directly conflicts on the same question of law with Bell v. State, 598 So.2d 203 (Fla. 4th DCA 1992), Horne v. State, 593 So.2d 309 (Fla. 5th DCA 1992), Riley v. State, 588 So.2d 1035 (Fla. 4th DCA 1991), and Kohler v. State, 588 So.2d 689 (Fla. 4th DCA 1991). The State respectfully disagrees.

In the instant decision, the First District Court of Appeal held that, in its written order imposing adult sanctions,¹ the six statutory "factors were addressed

¹ The full text of the trial court's written order is set out in a footnote to the majority decision (A 4).

briefly but appropriately in the written order with reference to the factual context of this case." (A 4) (emphasis added). In Bell, supra, at 203, the Fourth District Court of Appeal held that "the trial court must address each of the statutory criteria in a written order." In Horne, supra, at 310, the Fifth District Court of Appeal held that "any decision to impose adult sanctions shall be in writing and in conformity with each of the criteria. The court must render a specific finding of fact and state the reasons for imposing adult sanctions." In Riley, supra, at 1035, the Fourth District Court of Appeal held that a trial court must provide written findings in writing. In Kohler, supra, at 689-670, the Fourth District Court of Appeal held that, prior to sentencing a child as an adult, the trial court must make findings with respect to each of the six criteria.

In the instant case, the First District did not hold that the decision to impose adult sanctions and its findings need not be in writing. Rather, the First District held that, under the facts of the instant case as determined by looking at the written order, the trial court made the appropriate findings (A 3). To directly conflict with the First District's decision in the instant case, an appellate court would have to interpret an order identical to the one executed by the instant trial court and find that it did not appropriately address the six factors. None of the four above-mentioned cases even discussed the adequacy of a

written order or included the text of the written order in its opinion. Thus, these cases are not in express and direct conflict with the decision rendered in the instant case.

Petitioner also contends that the instant decision conflicts with cases involving Section 39.111(6)(d), Florida Statutes, which is the predecessor to Section 39.059(7)(d), Florida Statutes. While this is interesting from a historical perspective, Petitioner cannot establish conflict with cases interpreting a statute that no longer exists. Nevertheless, the decisions of the district courts in Meyers v. State, 593 So.2d 609 (Fla. 5th DCA 1992), Flowers v. State, 546 So.2d 782 (Fla. 4th DCA 1989), and Gooden v. State, 536 So.2d 392 (Fla. 4th DCA 1989), do not conflict with the instant decision. In Meyers, supra, at 609, the Fifth District Court of Appeal held that "any decision to impose adult sanctions shall be in writing and in conformity with the criteria. The court must render a specific finding of fact and state the reasons for imposing adult sanctions." In Flowers, supra, at 782, the Fourth District held that "the decision to impose adult sanctions [shall] be in writing and in conformance with the six criteria." In Gooden, supra, at 393, the Fourth District held that the trial court must "treat" all of the statutory criteria in sentencing a child as an adult. The decisions are in harmony with the instant decision because the First District held in the instant case that "the decision to impose

sanctions must be supported by a written order or a transcript containing the requisite findings of fact and reasons for imposing adult sanctions" (A 3).

The instant decision does not conflict with the decision of this Court in State v. Rhoden, 448 So.2d 1013 (Fla. 1984). In Rhoden, supra, at 1015, the trial court sentenced a child as an adult, but placed no reasons or findings in writing. This Court held that Section 39.111(6)(d), Florida Statutes (1981), required that a decision to impose adult sanctions be in writing and that findings of fact also be in writing. Id. at 1016-1017. In the instant case, the decision to impose adult sanctions was in writing the findings supporting such decision were in writing, and the First District agreed with the decision in Rhoden that the findings must be in writing (A 3). The decision also does not conflict with this Court's decisions in Pope v. State, 561 So.2d 554 (Fla. 1990), and Ree v. State, 565 So.2d 1329 (Fla. 1990), because those cases do not involve the imposition of adult sanctions or Section 39.059, Florida Statutes. By referring to these cases, Petitioner is arguing the merits of his position, rather than showing conflict with the instant decision. Thus, the results reached in the cases cited by Petitioner are in harmony with the present result, and there is no conflict.

CONCLUSION

In view of the absence of any express and direct conflict with the decisions of the other court's cited in Petitioner's brief, the State respectfully requests this Honorable Court to decline to accept discretionary jurisdiction to review the instant case.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL



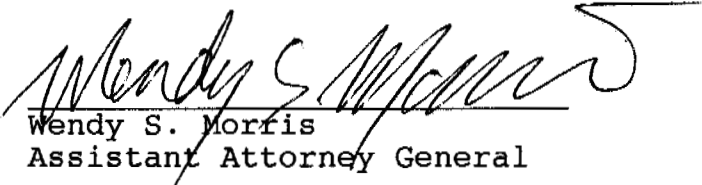
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to P. Douglas Brinkmeyer, Assistant Public Defender, Leon County Courthouse, Fourth Floor North, 301 South Monroe Street, Tallahassee, FL 32301, this 19th day of October, 1992.


Wendy S. Morris
Assistant Attorney General