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IN THE SUPREME COURT OF FLORIDA

CASE NO. _____

4th DCA Case No. 95-1019

86,052

STATE OF FLORIDA,

Petitioner,

vs.

PAUL LEROUX,

Respondent.

****

PETITIONER'S BRIEF ON JURISDICTION

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PRELIMINARY STATEMENT

Petitioner, the State of Florida, was the prosecuting authority in the Criminal Division of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida, and the Appellee in the Fourth District Court of Appeal. Respondent, Paul Leroux, was the defendant and the Appellant below. In this brief, the parties will be referred to as they appear before this Honorable Court.

The following symbols will be used:

"A" Petitioner's Appendix

STATEMENT OF THE CASE AND FACTS

On October 3, 1991, Respondent pled guilty to second degree murder with a firearm, pursuant to a negotiated plea with the State, and was sentenced to fifteen years' imprisonment with a three-year minimum mandatory (A. 1). On June 14, 1995, the Fourth District Court of Appeal, with Judge Stone dissenting, reversed the trial court's summary denial of Respondent's 3.850 motion and remanded to the trial court for an evidentiary hearing because, according to the majority, the plea colloquy does not conclusively refute Respondent's allegation that his negotiated plea was a product of trial counsel's alleged misrepresentations concerning the amount of the sentence he would actually serve and his eligibility for gain time (A. 2).

The Fourth District stated and held in part as follows:

> In this case, defendant was asked by the trial court whether anyone "had promised [him] anything to get [him] to [plea]?" By responding in the negative to the trial court's question, defendant generally denied the existence of other promises that led him to plead, but did not specifically deny whether any additional promises were made to him concerning the terms of the plea, other than those discussed in the colloquy.
>
> * * * * *
>
> When accepting a plea, trial courts are well advised at a minimum to ascertain whether any promises were made to a defendant concerning the sentence apart from those discussed during the plea colloquy.

* * * * *

> Careful examination of the transcript attached to the motion for post-conviction relief convinces us that there is nothing which conclusively refutes defendant's allegation that trial counsel affirmatively misinformed him that he would serve four years or less of the fifteen-year sentence...

(citation omitted) (A. 2).

On July 7, 1995, Petitioner timely filed its Notice to Invoke Discretionary Jurisdiction. This brief on jurisdiction follows.

SUMMARY OF ARGUMENT

The Fourth District's decision is in express and direct conflict with Pierce v. State, 318 So. 2d 501 (Fla. 1st DCA 1975), and Garcia v. State, 228 So. 2d 300 (Fla. 3d DCA 1969).

ARGUMENT

THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL IN LEROUX V. STATE EXPRESSLY AND DIRECTLY CONFLICTS WITH PIERCE V. STATE, 318 SO. 2D 501 (FLA. 1ST DCA 1975), AND GARCIA V. STATE, 228 SO. 2D 300 (FLA. 3D DCA 1969).

The decision of the Fourth District is in express and direct conflict with Pierce v. State, 318 So. 2d 501 (Fla. 1st DCA 1975), and Garcia v. State, 228 So. 2d 300 (Fla. 3d DCA 1969). Accordingly, this Honorable Court has discretionary jurisdiction pursuant to Article V, Section 3(b)(3) of the Florida Constitution.

In Pierce v. State, 318 So. 2d 501 (Fla. 1st DCA 1975), the appellant sought to have his convictions for rape and robbery overturned because, inter alia, his guilty plea was induced by coercion and promises made to him by his court-appointed counsel. The First District stated and held as follows:

> [The appellant's] allegations of coercion and unfulfilled promises are completely unsupported by the record. To the contrary, when the appellant and his co-defendant were specifically asked by the trial court if any promises had been made to them or if they had been pressured or coerced into pleading guilty by anyone, they replied in the negative.
>
> As the record indicates...that the plea was not the product of coercion or promises, we affirm the lower court's judgments and sentences.

(emphasis added). Id. at 502.

In Garcia v. State, 228 So. 2d 300 (Fla. 3d DCA 1969), the Third District affirmed the trial court's denial of the appellant's motion for post-conviction relief, which motion alleged as follows: that contrary to what the appellant had stated at the time he pled guilty to rape, his plea was not free and voluntary, but was made because he had been told by his attorney that (1) the attorney had an understanding with the prosecutor that if appellant pled guilty the sentence imposed would be twenty years, but that otherwise the prosecutor would seek a death penalty; and (2) his attorney had informed him that upon being questioned by the court he should not reveal such promise, and had coached him as to the answers he should give to questions put to him in court regarding his change of plea. The plea colloquy was set forth in the Third District's opinion, and it reflected in pertinent part that the appellant was questioned as follows with regard to any promises that may have been made to him:

> Mr. Carricarte [Prosecutor]: Did anyone threaten you in any way---
>
> Mr. Garcia [Appellant]: No, sir.
>
> Mr. Carricarte: []---or force you to plead guilty to the charge?
>
> Mr. Garcia: No, sir.
>
> Mr. Carricarte: Did anyone promise you any kind of special consideration to cause you to plead guilty to the charge of rape?
>
> Mr. Garcia: No, sir.

* * * * *

> Mr. Carricarte: Has anyone whomsoever, the police, the defense attorney, the State Attorney's Office, promised you any kind of special consideration for changing your plea from not guilty to guilty?
>
> Mr. Garcia: No, sir.

Id. at 302.

The Third District held that the trial court properly found that the appellant's bare allegations were conclusively refuted by the record, which clearly showed the voluntariness of the appellant's plea. Id. at 305. The court also explained that a guilty plea entered in the face of statements by the trial court as to the consequences to a defendant of such a plea is not necessarily involuntary even if, as alleged by the appellant in Garcia, a defendant had understood the prosecutor had agreed with his attorney that the plea would bring about a lesser sentence. Id.

The trial court's inquiry of Respondent in the instant case, including its question to Respondent regarding "promises," as noted in the Fourth District's opinion, was equivalent to, and as specific as, the respective inquiries in the foregoing cases. Thus, the instant decision of the Fourth District is in express and direct conflict with Pierce v. State, 318 So. 2d 501 (Fla. 1st DCA 1975), and Garcia v. State, 228 So. 2d 300 (Fla. 3d DCA 1969).

This Honorable Court should exercise its discretionary review jurisdiction and resolve the conflicts presented between the district courts of appeal.

CONCLUSION

WHEREFORE, Petitioner prays this Honorable Court will exercise its discretion to review the decision of the Fourth District Court of Appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Brief has been furnished by U.S. Mail to: BERNARD F. DALEY, ESQ., Daley & Associates, Counsel for Respondent, P.O. Box 1177, Tallahassee, Florida 32303, this 14th day of July, 1995.

Of Counsel

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APPENDIX TO
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