IN THE SUPREME COURT
STATE OF FLORIDA

EDWIN H. BEATY,

v.

STATE OF FLORIDA.

DCA CASE NO: 96-03252

89,356

PETITIONERS' JURISDICTIONAL, BRIEF

On request for review from the District Court of Appeal, Second District, State of Florida.

EDWIN H. BEATY 350297 M.B.#359
CHARLOTTE CORRECTIONAL INST.
33123 OIL WELL ROAD
PUNTA GORDA, FL 33955
PETITIONER PRO SE

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PRELIMINARY STATEMENT

In this brief, petitioner, Edwin H. Beaty, will be referred to by name or as defendant. The appellee will be referred to as state.

Citations to the record up for review will be made by the letter "R" and the appropriate page number. The pleadings on review shall be cited as:

MO - Motion for Postconviction Relief

ME - Memorandum of law in support of motion proper

O - Trial Court order of denial of relief

AB - Petitioner's initial brief for appeal to the District Court

DE - Decision of the District Court

RE - Motions for rehearing and rehearing en banc

TABLE OF CITATIONS

STATEMENT OF THE CASE AND FACTS

This is a request for direct review from a decision of the District Court of Appeal. The decision expressly and directly conflicts with a decision of another district court of appeal or of the Supreme Court on the same question of law. This Court has jurisdiction pursuant to Art. V, § 3(b)(3), Florida Constitution.

Defendant was convicted of one count of first degree murder and sentenced on August 9, 1990. (R-MO-1)

Defendant appealed his conviction to the Second District Court of Appeal, the conviction was affirmed Per Curiam without opinion, on June 2, 1993. Mandate was issued from that court on June 22, 1993. (R-MO-2)

Defendant requested direct review from the Florida Supreme Court by letter on July 13, 1993, this letter was stamped filed by the Chief Deputy Clerk of the Supreme Court, Sid White, on July 19, 1993. Request for review was denied on September 10, 1993. (R-MO-2 and R-RE-attachments 7-9)

Defendant filed a timely motion for postconviction relief with (17) grounds for relief on July 25, 1995, with a memorandum of law in support thereof, with affidavits and other documents. (R-MO-1-35 and R-ME-1-26)

Approximately one year later on July 18, 1996, the trial court denied the motion declaring the motion untimely. (R-0-1-3)

Defendant filed a timely notice of appeal on July 26, 1996. (R-AB-2)

Defendant filed an initial brief for the appeal to the District Court on September 20, 1996. (R-AB-1-14)

On or about October 23, 1996, the District Court issued it's opinion affirming the trial court's decision denying the defendant relief. (R-DE-1-4)

Defendant filed a motion for rehearing and a motion for rehearing

en banc with attachments, to the District Court on November 3, 1996. (R-RE-1-6, attachments 7-9, and RE-1-5)

Defendant filed notice to invoke discretionary jurisdiction, to the District: Court, on November 12, 1996. This brief on jurisdiction is filed pursuant to Fla.R.App.P., 9.120(d).

SUMMARY OF THE ARGUMENT

In the instant case the district court affirmed with opinion the trial court's decision of denying the defendant relief pursuant to 3.850 postconviction relief, as being untimely filed. The district court's decision is based upon speculation and dicta which has caused a misapplication of law, that directly conflicts with a decision of another district court of appeal or of the Supreme Court on the same questions of law.

Moreover, the decision violates the essential requirement of law as applied to fundamental principles of fairness. Therefore, this Court has jurisdiction.

The decision conflicts with the issue of law of when and why the Supreme Court may accept discretionary review jurisdiction.

The decision conflicts with the basic concept of the issue of law that those untrained in law should be accorded fairness and justice, and pro se motions, petitions and letters seeking relief should be accorded liberal interpretation.

The decision conflicts with the established principle of law concerning newly discovered evidence and the time limits which these claims should be brought forward.

The decision conflicts with the issue of law that interference with access to the courts by state officials cannot foreclose a defendant from

from having his conviction reviewed, which was extended to 3.850 proceedings.

The decision conflicts with the issue of law that an opinion must be based on facts and not probability and speculation.

The decision conflicts with the issue of law that an opinion joined in by majority of members of the court constitutes the law of the case.

ARGUMENT

THE DECISION OF THE DISTRICT COURT OF APPEAL EXPRESSLY AND DIRECTLY CONFLICTS WITH A DECISION OF ANOTHER DISTRICT COURT OF APPEAL OR OF THE SUPREME COURT ON THE SAME QUESTION OF LAW, WHICH WOULD GIVE THE SUPREME COURT AUTHORITY TO ACCEPT JURISDICTION

After the the defendants conviction and sentence of August 9, 1990, the District Court affirmed the conviction without opinion on June 2, 1993, and issued it's mandate on June 22, 1993. Being untrained in law the defendant wrote a letter to the Florida Supreme Court seeking direct review of his conviction, the letter was written in good faith basically alleging the essential requirements of law had been violated resulting in a miscarriage of justice leading to the conviction and the affirmance of the district court.

The opinion of the district court at issue contends since the defendant did not comply with Rule 9.120 Fla.R.App.P., and file notice to the district court that he was seeking direct review there is no record establishing such. And, even if notice had been properly filed it would not change the court's analysis since the defendants letter was a futile attempt to invoke the supreme court's jurisdiction regarding an unwritten opinion. Therefore, the defendants two year time limit for filing a 3.850 motion began when the district court issued mandate, and not when the defendant received a letter from this court's clerk of September 10, 1993, advising the defendant the

Supreme court was unable to grant review of a per curiam affirmed decision of a district court of appeal.

However, this is not the law according to Gust v. State, 558 So.2d 450 (Fla.App. 1 Dist. 1990); Ferris v. State, 575 So.2d 303 (Fla.App. 4 Dist. 1991); Combs v. State, 436 So.2d 93 (Fla. 1983); Haines City Community Dev. v. Heggs, 658 So.2d 523 (Fla. 1995); State v. Bock, 659 So.2d 1196 (Fla.App. 3 Dist. 1995); State v. Meneses, 392 So.2d 905 (Fla. 1981); Ward v. Dugger, 508 So.2d 778 (Fla.App. 1 Dist. 1987); Huff v. State, 569 So.2d 1247 (Fla. 1990); and Nava v. State, 659 So.2d 1314 (Fla.App. 4 Dist. 1995).

The defendant being untrained in law made a good faith attempt to invoke the discretionary review jurisdiction of the Supreme Court by letter. Pro se motions are traditionally " accorded liberal interpretation... to effect justice and afford the [movant]... the advantage denied him his lack of legal training...., " ~~Gust~~, ~~Ferris~~, supra. The instant opinion conflicts with this basic issue of law, by asserting the defendants good faith attempt was frivolous. However, the defendants letter *to* the Supreme Court basically stated the essential requirements of law had been violated in his trial and by the district court's affirming the conviction, which resulted in a miscarriage of justice. Since the defendant complained of such issues in his letter, the Supreme Court could have accepted jurisdiction. Combs, Haines City Community ~~Dev.~~, and State v. Bock, supra. The instant opinion of the district court conflicts with this issue of law.

Moreover, the instant opinion conflicts with the basic issue of law that a trial court: lacks jurisdiction to consider postconviction motions until direct review proceedings are completed, which does not occur until the Supreme Court grants or denies review. State v. Meneses, Ward, Huff, Nava, supra.

The decision cites to Huff v. State, 569 So.2d 1247 (Fla. 1990), as partial authority to affirm the trail court's denial. However, the decision is based on speculation concerning Huff, supra, where the district court is unsure if the principle of law in Huff, should be applied to the instant case. The defendant was indicted for and convicted of a capital crime, and is not aware of the any statutory authority that lessens the case from a capital case to a non-capital case, because he received a life sentence instead of a death sentence. Furthermore, the district court was unaware of whether a written opinion was issued in Nava v. State, 659 So.2d 1314 (Fla.App. 4 Dist. 1995), and declined to certify conflict with the instant case, This decision is also based on speculation causing a misapplication of law creating an obvious conflict. Conflict exists with Furlong v. Leybourne, 171 So.2d 1 (Fla. 1965)(misapplied doctrine of law creates obvious conflict); Global Contact Lens, Inc. v. Knight, 254 So.2d 807 (Fla. 3rd DCA 1971)(conclusion is dictated by doctrine of the law of the case); Cirack v. State, 201 So.2d 706 (Fla.1967) (opinions must be based on facts not assumptions, probabilities, or speculation).

The conclusion of the instant decision relies on dicta (dissenting opinion) of Justice England, in State v. Meneses, 392 So.2d 905,907 (Fla. 1981). This directly conflicts with Global Contact Lens, supra, and Greene v. Massey, 384 So.2d 24 (Fla.1980)(the opinion joined in by the majority of members of the court constitutes law of case).

The defendant brought (2) two grounds of newly discovered evidence in his postconviction motion which were within the time limits found in Adams v. State, 543 So.2d 1244 (Fla. 1989). The instant decision by the district court expressly and directly conflicts with Adam, supra, resulting in a miscarriage of justice.

Since the instant decision expressly and directly conflicts with Adams, supra, it is also in conflict with Johnson v. State, 536 So.2d 1009 (Fla.1988); Bolender v. State, 658 So.2d 82 (Fla.), cert. denied, ___U.S.___, 116 S.Ct. 12, 132 L.Ed.2d 896 (1995); Porter v. State, 653 So.2d 374 (Fla.) cert. denied, ___U.S.___, 115 S.Ct. 1816, 131 L.Ed.2d 739 (1995), where the issue of law concerning newly discovered evidence timeliness has certainly been missapplied.

In spite of the fact the defendant had a good faith belief that he was well within the two-year time limit to file his 3.850 motion from the date of the letter from the Clerk of the Supreme Court, Sid J. White, of September 10, 1993. The defendant made a clear showing of state interference with access to the courts by state officials in his motion. This showing was ignored by the trial court and the district court, therefore, it conflicts with the issue of law, the basic concept, that interference with access to the courts by state officials cannot foreclose a defendant from having his conviction reviewed, which was extended to 3.850 proceedings. Although Haag v. State, 591 So.2d 614 (Fla. 1992), receded and overruled precedent: cases concerning prisoners mailing notices and motions through prison officials, and created the mail-box rule, it did not change the law concerning state interference with access to the courts

In fact, Haag reinforced the basic fundamental concept of fairness enumerated in Florida's Declaration of Rights. Even though the instant case is not hinged on the timely mailing of his motion by prison officials, and if this Court should rule against the defendant concerning his assumption that he was within the two-year time limit, the decision is still in conflict with Haag, supra, and the Florida Constitution. Nothing in our law suggests that the two-year limitation must be applied harshly or contrary to the

to the fundamental principles of fairness. Haag at 616. If not for the nefarious state interference the defendant was faced with, the motion for postconviction relief would have been filed (6) six months earlier. The decision certainly conflicts expressly and directly, with the basic concept of fairness and justice.

CONCLUSION

Consistent with the foregoing authorities, the Supreme Court may accept jurisdiction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petitioners' Jurisdictional Brief with attached Appendix has been furnished by U.S. Mail to the State Attorneys Office, Pasco County, Pasco Government Center, 7530 Little Road, New Port Richey, Florida 34654, and the Attorney General, Office of the Attorney General, 2002 N. Lois Ave., 7th Floor, Tampa, Florida 33607 on this 21 day of November, 1996.

EDWIN H. BEATY PETITIONER PRO SE

APPENDIX

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION *AND*, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

EDWIN H. BEATY, a/k/a EDWIN BEATTY, Appe1lant, v. STATE OF FLORIDA, Appellee.	)	Case No. 96-03252

Opinion filed October 23, 1996.

Appeal pursuant to Fla. R. App. P. 9.140(g) from the Circuit Court for Pasco County; Craig C. Vi1lanti, Judge.

ALTENBERND, Judge.

Edwin H. Beaty, a/k/a Edwin Beatty, appeals an order denying his motion for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850. We affirm because his motion was not filed within two years of this court's mandate in his direct appeal and does not allege a basis to extend the two-year period contained in rule 3.850(b). Mr. Beaty's direct appeal was affirmed per curiam without a written opinion. We

hold that a judgment and sentence become final for purposes of rule 3.850 when our mandate issues in a direct appeal in which the judgment and sentence are affirmed without a written opinion.

Mr. Beaty was convicted of first-degree murder and received a life sentence. He appealed that judgment and sentence to this court in August 1990. On June 2, 1993, this court affirmed, Our mandate issued on June 22, 1993. Instead of filing a motion for postconviction relief at that time, Mr. Beaty alleges that he filed "for review by certiorari" in the Florida Supreme Court. That court allegedly denied review on September 10, 1993.[1]

Mr. Beaty served his motion for postconviction relief on July 25, 1995. The trial court denied the motion on the ground that it was untimely. We conclude that the trial court correctly measured the two-year **period** from the issuance of our mandate, and not from the supreme court's alleged denial of review.

In Nava v. State, **659 So.** 2d 1314 (Fla. 4th **DCA** 1995), the Fourth District held that a prisoner could file a motion pursuant to rule 3.850 "within two years of the termination, by

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[1] This court has no record establishing **that** Mr. **Beaty** filed a notice to invoke the discretionary jurisdiction of **the** supreme court pursuant to Florida Rule of Appellate Procedure 9.120. Because he alleges under oath that **he** sought certiorari review directly in the supreme court, we assume that he made such an attempt. Our analysis would not change if he had filed in this court a notice to invoke the supreme court's jurisdiction in a futile effort: to **seek** review of our unwritten opinion.

denial of a petition for writ of certiorari in the supreme court of Appellant's plenary appeal." we have been unable to locate a written opinion by the Fourth District in Mr. Nava's direct appeal. Thus, we presume that the Fourth District affirmed the direct appeal without a written opinion. In reaching its decision, the Fourth District relied upon the following statement from Huff v. State, 569 So. 2d 1247, 1250 (Fla. 1990): "If a writ of certiorari is filed in the United States Supreme Court, the two-year period does not begin to run until the writ is finally determined." The facts in **Huff,** however, reveal that it was a capital case. The United States Supreme Court had jurisdiction to review the written opinion in that death penalty **case.**

We are not convinced that the rule in Huff should apply in this case. Although Mr. Beaty could file **papers** in the Florida Supreme Court, **the** constitution gives that court no appeal jurisdiction or discretionary jurisdiction to review this court's per curiam affirmance of Mr. Beaty's judgment and sentence because it was rendered without a written opinion. Art. V, § 3(b), **Fla.** Const.; **Fla.** R. **App.** P. 9.030(a); Jenkins v. State, 385 **So.** 2d 1356 (Fla. 1980). No pleadings he may have filed in the Florida **Supreme** Court divested the trial court of its jurisdiction to review a motion pursuant to rule 3.850. We **see** no reason to pretend that his judgment and sentence did not become final because of his frivolous pleadings in the supreme court. Assuming that **Nava** involved an affirmance without written

opinion, its holding encourages prisoners to file inappropriate and futile pleadings in the Florida Supreme Court.[2]

We distinguish cases in which prisoners have timely sought supreme court review of district court decisions affirming a judgment and sentence by a written opinion. See State v. Meneses, 392 So. 2d 905 (Fla. 1981); Brown v. State, 617 So. 2d 1105 (Fla. 1st DCA 1993). See also Ward v. Dugger, 508 So. 2d 778 (Fla. 1st DCA 1987). When a district court issues a written opinion, there is a possibility that the supreme court will take jurisdiction over the case. The fact that the two-year time limitation for the filing of a rule 3.850 motion runs from the supreme court's denial of review in cases in which it has the constitutional power of review is no reason to extend the time in cases in which it has no jurisdiction to review the judgment and sentence. The argument in Justice England's dissent in Meneses, which convinced two other justices in a case involving a written opinion, appears to be more persuasive in a case of per curiam affirmance without a written opinion. 392 So. 2d at 907 (England, J., dissenting).

Affirmed.

RYDER, A.C.J., and LAZZARA, J., Concur.

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[2] We decline to certify conflict with Nava v. State, 659 So. 2d 1314 (Fla. 4th DCA 1995), in this case because we are not certain that it involved a per curiam affirmance without a written opinion.