

**FILED**

SID J. WHITE

MAR 10 1998

IN THE SUPREME COURT OF FLORIDA

CLERK, SUPREME COURT

By \_\_\_\_\_

Brief Deputy Clerk

CLARENCE H. HALL, JR.,

Petitioner,

v.

CASE NO. 91,122  
91,075 - C -

STATE OF FLORIDA,

Respondent.

---

ON DISCRETIONARY REVIEW FROM  
THE FIFTH DISTRICT COURT OF APPEAL

AMENDED JURISDICTIONAL BRIEF OF RESPONDENT

ROBERT A. BUTTERWORTH  
ATTORNEY GENERAL

CARMEN F. CORRENTE  
ASSISTANT ATTORNEY GENERAL  
Florida Bar #304565  
444 Seabreeze Boulevard  
Daytona Beach, FL 32118  
(904) 238-4990

COUNSEL FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES . . . . . ii  
SUMMARY OF ARGUMENT . . . . . 1  
ARGUMENT

POINT ON APPEAL

THE DECISION OF THE FIFTH DISTRICT  
COURT OF APPEAL DOES NOT SUPPORT THE  
INVOCATION OF JURISDICTION IN THIS  
COURT . . . . . 2  
CONCLUSION . . . . . 6  
CERTIFICATE OF SERVICE . . . . . 7

TABLE OF AUTHORITIES

CASES:

<u>Ansin v. Thurston,</u> 101 So. 2d 808 (Fla. 1958) . . . . .	4
<u>Hall v. State,</u> 698 So.2d 576 (Fla. 5th DCA 1997) . . . . .	2
<u>Jenkins v. State,</u> 385 So. 2d 1356 (Fla. 1980) . . . . .	4
<u>Mercade v. State,</u> 698 So.2d 1313 (Fla. 2d DCA 1997) . . . . .	2,3,4
<u>Reaves v. State,</u> 485 So. 2d 829 (Fla. 1986) . . . . .	4

OTHER AUTHORITIES:

Article V, Section (3)(b)(3), Florida Constitution . . . . .	4
Fla. R. App. P. 9.030(a)(2)(A) . . . . .	4
§ 944.28, Florida Statutes . . . . .	3

### SUMMARY OF ARGUMENT

The decision of the Fifth District Court of Appeal does not expressly and directly conflict with a decision of this Court or any other court. Moreover, no other case has expressly declared conflict with this cause. The District Court directed forfeiture of gain time pursuant to a specified statute which must be followed by the Department of Corrections. There is nothing within the "four corners" of the opinion below which could form the basis for invoking the discretionary jurisdiction of this Court.

ARGUMENT

POINT ON APPEAL

THE DECISION OF THE FIFTH DISTRICT COURT OF APPEAL DOES NOT SUPPORT THE INVOCATION OF JURISDICTION IN THIS COURT.

This Court originally assigned case number 91,075 to this case when the notice to invoke discretionary jurisdiction was filed July 23, 1997. Briefs on jurisdiction were filed and on January 15, 1998 this Court declined to accept jurisdiction and further ordered that no motion for rehearing would be entertained. (Exhibit A) Apparently, on February 12, 1998, this Court used Petitioner's motion to take judicial notice, which was filed in 91,075 on November 24, 1997, to open a new case (number 91,122) and ordered the State to file an "amended" jurisdictional brief in the new case. The State first argues that because case number 91,075 is *res judicata* and a closed case, any "reopening" or "reconsideration" is untimely. If this Court wishes to withdraw its now final January 15, 1998 decision, it should not do so by opening a new case based upon a pleading filed and encompassed within the previous case.

Petitioner's reference to Mercade v. State, 698 So.2d 1313 (Fla. 2d DCA 1997) in his "motion to take judicial notice" does not change the fact that there is no conflict. While the Mercade opinion discusses Hall v. State, 698 So.2d 576 (Fla. 5th DCA 1997), it does not certify conflict.

The difference between this case and Mercade is merely one of

semantics. Mercade recommends that the DOC forfeit the defendant's gain time, while in this case the district court directs the DOC to forfeit Petitioner's gain time *pursuant to section 944.28, Florida Statutes*. (slip opinion at 2) It is plain from a reading of the statute that the DOC can only accomplish the district court's directive by following the method or procedure outlined in 944.28(2)(c) and, necessarily, Mercade. It must be presumed that the district court was fully apprised of the statute which they refer to as authority for their holding. Thus there is absolutely no conflict with the ultimate holding in Mercade.

Moreover, this issue is premature. This Court has no jurisdiction to decide a matter not yet ripe for review. Not only has this case already been decided, but Petitioner has never even claimed that the DOC attempted to forfeit his gain time without utilizing the method found in 944.28, Florida Statutes.

Finally, if merely substituting the word "recommend" for "direct" in the district court's opinion is deemed somehow insufficient to correct the "semantic anomaly," the district court should be informed that it may use its contempt power to add a consecutive term to Petitioner's sentence.

This Court should be aware that Petitioner filed at least five separate legal actions in just the 1997 calendar year relating to his 1990 conviction. One of those, case number 89,847, was in addition to the case which this Court decided in January of this year. (Exhibit B) Clearly, the District Court of Appeal is correct when it states that Petitioner's filings of postconviction

pleadings are an abuse of process and that the court has warned him in the past regarding the possible forfeiture of gain time if more frivolous actions are filed. The courts of this State must have the authority to stop this abuse of process, whether through contempt or gain time forfeitures.

This Court simply has no jurisdiction under Fla. R. App. P. 9.030(a)(2)(A). Conflict jurisdiction exists under Article V, Section (3)(b)(3) of the Florida Constitution only where a decision of a district court "expressly and directly conflicts" with a decision of this Court or another district court. This Court has repeatedly held that such conflict must be express and direct, that is, "it must appear within the four corners of the majority decision." Reaves v. State, 485 So. 2d 829, 830 (Fla. 1986). The "four corners" of the decision in this cause long predates the Mercade opinion, and the subsequent decision in Mercade did not expressly and directly declare a conflict with this case; hence there should be no exercise of discretionary jurisdiction.

In Jenkins v. State, 385 So. 2d 1356, 1357 (Fla. 1980) this Court quoted from its earlier decision in Ansin v. Thurston, 101 So. 2d 808, 810 (Fla. 1958):

We have heretofore pointed out that under the constitutional plan the powers of this Court to review decisions of the district courts of appeal are limited and strictly prescribed...It was never intended that the district courts of appeal should be intermediate courts...To fail to recognize that these are courts primarily of final appellate jurisdiction and to allow such

courts to become intermediate courts of appeal would result in a condition far more detrimental to the general welfare and the speedy and efficient administration of justice than that which the system was designed to remedy. (emphasis supplied)

Given the fact that the Fifth District Court is a court of final appellate jurisdiction and given the very limited and restricted bases for this Court's exercise of its discretionary jurisdiction under 9.030, especially in a cause that has already been decided by this Court, it cannot be said that Petitioner has established any good cause for the exercise of that jurisdiction. There is no express conflict; any conflict is merely a matter of semantics; and there is no other basis to support this Court's jurisdiction.




CONCLUSION

Based on the argument and authorities presented herein, Respondent requests this Honorable Court to decline to accept jurisdiction in this cause

Respectfully submitted,

ROBERT A. BUTTERWORTH  
ATTORNEY GENERAL




CARMEN F. CORRENTE  
ASSISTANT ATTORNEY GENERAL  
Fla. Bar #304565  
444 Seabreeze Boulevard  
Fifth Floor  
Daytona Beach, FL 32118  
(904) 238-4990

COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Respondent's amended brief on jurisdiction in case number 91,122/91,075 has been furnished by U.S. Mail to Clarence H. Hall, Jr., 1800 Highway 19 North, Palatka, FL 32177 this 9th day of March, 1998.



---

CARMEN F. CORRENTE  
ASSISTANT ATTORNEY GENERAL

APPENDIX A

Supreme Court of Florida

Corrente  
97-1-110

THURSDAY, JANUARY 15, 1998

CLARENCE H. HALL, JR.,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*

CASE NO. 91,075

District Court of Appeal,  
5th District - No. 97-527

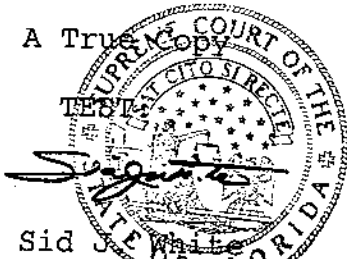
\* \* \* \* \*

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution (1980), and the Court having determined that it should decline to accept jurisdiction, it is ordered that the Petition for Review is denied.

No Motion for Rehearing will be entertained by the Court. See Fla. R. App. P. 9.330(d).

OVERTON, SHAW, HARDING and ANSTEAD, JJ., and GRIMES, Senior Justice, concur

A True Copy



Sid J. White  
Clerk, Supreme Court

TC

cc: Hon. Frank Habershaw, Clerk  
Hon. Edward L. Brooks, Clerk  
Hon. A. W. Nichols, III, Judge

Mr. Clarence H. Hall, Jr.  
Ms. Carmen F. Corrente

YOUNG & RUBICAM

ST. PETERSBURG

APPENDIX B

Correspondence

97-1-2895

# Supreme Court of Florida

MONDAY, MARCH 31, 1997

CLARENCE HERBERT HALL, JR.,

Petitioner,

v.

STATE OF FLORIDA, etc.,  
et al.,

Respondents.

\* \* \* \* \*

\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*

CASE NO. 89,847

wrong case #!

The Petition for All Writs is hereby denied.

OVERTON, SHAW, GRIMES, HARDING and WELLS, JJ., concur

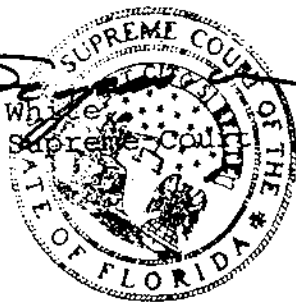
A True Copy

TEST:

TC

cc: Mr. Clarence H. Hall, Jr.  
Hon. Robert A. Butterworth-  
Daytona Beach

Sid J. White,  
Clerk, Supreme Court



RECEIVED  
97 APR -14 AM 11:39  
DAYTONA BEACH, FLORIDA