

IN AND FOR THE SUPREME COURT  
STATE OF FLORIDA

FILED

SID J. WHITE

OCT 16 1997

BILLY WAYNE DANIELS,  
Defendant/Petitioner,

91,537

CLERK, SUPREME COURT  
By \_\_\_\_\_  
Chief Deputy Clerk

vs.

DCA CASE NO: 97-900

L.T. CASE NO: 93-177-183

STATE OF FLORIDA,  
Plaintiff/Petitioner.

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PETITIONER'S JURISDICTIONAL BRIEF

On review from the District Court of Appeal,  
First District, State of Florida.

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Submitted by:

✓  
Billy Wayne Daniels #580723  
Holmes Correctional Inst.  
3142 Thomas Drive  
Bonifay, FL 32425

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Comes now, Billy Wayne Daniels, Petitioner, in proper person, and respectfully presents this, his Brief on Jurisdiction pursuant to Rule 9.120(d), Fla. R. App. P., in the above styled and numbered cause, and delineates the following:

**JURISDICTION OF THE COURT**

Petitioner invokes the Discretionary Jurisdiction of this Court under Art. V. sec. 3(b)(3), Fla. Const. and Rule 9.030(a)(2)(A)(iv) which constitutionally procedurally empowers this tribunal with authority to review a decision of a District Court of Appeal that directly, expressly and irreconcilably conflicts with a decision of this Court, or another District Court of Appeal on the same point of law.

Petitioner respectfully contends that the decision of the First District Court of Appeal in Daniels v. State, 22 FLW (D)1678 (July 11, 1997), directly, expressly and irreconcilably conflicts with the decision of the Fifth District Court of Appeal in Hall v. State, 22 FLW (D)1877 (August 1, 1997) on the same point of law. Additionally, there is an apparent conflict of the same nature between Daniels, supra, and Bryan v. State, 470 So. 2d 864 (2nd DCA 1985).

Petitioner further contends that this decisional conflict creates, and will perpetrate chaos and discord among the State's decisional precedents, and contribute to the prospect, or likelihood of inexplicable disparate results among cases relying on the same rule of law. Therefore, Petitioner invokes the Certiorari Jurisdiction of this Court to resolve the conflict and to determine which decision cited above establishes the correct and controlling rule of law for this State.

#### GROUNDS FOR INVOKING JURISDICTION

Petitioner respectfully invites the Court to determine whether an Appellate Court can affirm a decision of a Circuit Court denying a Motion for Postconviction Relief, when the Circuit Court admittedly was without jurisdiction to entertain and decide the motion ab initio, because the case was pending on direct appeal when the motion was filed. Being confronted with this factual scenario, the 1st DCA in Daniels, supra, expressly decided that the Circuit Court's decision denying the postconviction motion could be affirmed on an alternative ground, even while acknowledging that the Circuit Court was devoid of authority over the motion because of a pending direct appeal. A contrary view was expressly delineated in Hall, supra, where the 5th DCA found the Circuit

Court's decision denying a postconviction motion a nullity because a pending appeal divested the Circuit Court of jurisdiction over the appeal at the outset.

The common point of law implicated in both cases is that the Circuit Court was devoid of jurisdiction over the postconviction motions because of pending appeals. However, the 1st and 5th DCA reached expressly divergent and irreconcilably decisions as to whether the Circuit Court's decision should be affirmed or ruled a nullity. Because this Court is the ultimate arbiter of Florida Law, and the decisions supra unnecessarily precludes uniformity, consistency and harmony in the law of this State, there exist valid grounds for invoking this Court's jurisdiction.

#### FACTS RELIED UPON

Following the revocation of his community control and sentencing to the Department of Corrections, appointed counsel for Petitioner filed a notice of appeal, (App.A). The Circuit Court granted Petitioner leave to proceed on direct appeal in forma pauperis, (APP.C).

While Petitioner's direct appeal was pending, he (pro se) filed a motion for postconviction relief in the Circuit Court pursuant to Rule 3.850, Fla. Crim. P. (App.B). Subsequent to the

denial of his Rule 3.850 motion by the Circuit Court, Petitioner filed a notice of appeal, (App.G). As a result, both Petitioner's direct appeal and the appeal from the denial of his Rule 3.850 motion were pending before the 1st DCA simultaneously (App.H-M).

Petitioner, pro se, filed a motion in the Appellate Court moving for the dismissal of the appeal of the postconviction relief (App.N). As a basis for dismissal of the appeal, Petitioner specifically asserted a lack of jurisdiction by the Circuit Court to decide the Rule 3.850 motion, and claimed that the Circuit's order of denial was null and void ab initio (App.N). The 1st DCA denied Petitioner's motion requesting dismissal of the appeal (App.O).

On July 11, 1997 the 1st DCA rendered a written decision which expressly acknowledged that the Circuit Court was without jurisdiction to decide the Rule 3.850 motion because of Petitioner's pending direct appeal, but nevertheless affirmed the Circuit Court's decision on some inscrutable alternative ground, (App.P). Following timely motions for rehearing, clarification, request for certification, the denial thereof and also a motion for rehearing en banc, Petitioner thereupon presented his Notice Invoking Discretionary Jurisdiction of this Court (App.R). Petitioner's instant Brief on Jurisdiction follows:

## ARGUMENT

Petitioner's argument relies on the proposition that when a trial court is devoid of jurisdiction to decide a case, that any definitive ruling of the court is null, void and of no effect. Evolving from this proposition is the settled rule in this state, as is clearly and consistently established by legal precedent, that when a direct appeal is pending, a Circuit Court has no authority to decide a motion for postconviction relief. See e.g. State v. Menes, 392 So. 2d 905 (Fla. 1981). With a Circuit Court's final decision being null, void and to no effect because it has no authority to enter it at the outset, then the necessary corollary of the Circuit Court's decision is that it is a nullity, and cannot be affirmed on appeal. See e.g. Hall v. State, supra.

In this case, even while acknowledging the Circuit Court's clear lack of jurisdiction to decide Petitioner's Rule 3.850 motion because of his pending appeal, the 1st DCA affirmed the Circuit Court's order denying the motion nevertheless. Petitioner respectfully contends that because the Circuit Court was devoid of jurisdiction, then it's decision on the motion is a nullity and should not be affirmed on any ground. The common-sense approach of nothing-from-nothing-leaves-nothing should prevail under such circumstances!



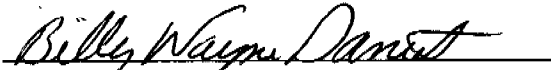
Petitioner contends that to sustain the 1st DCA's decision in Daniels, supra, while implicitly and simultaneously leaving Hall, supra, intact, would create the potential likelihood of some Circuit Courts deciding Rule 3.850 motions while direct appeals are pending because orders disposing of the motion may be affirmed under Daniels; while other Circuit Courts correctly refuse to decide such motions because of the nullity of their decisions under the instruction of Hall. Circuits Courts under the territorial jurisdiction of the 1st DCA will be bound by Daniels; while Circuits within the territorial boundary of the 5th DCA authority will be bound by Hall. Thus, only the geographical location of the litigant and his litigation may dictate which decision controls. Such a potentially haphazard, fortuitous application of the law is unwarranted.

It should be noted that Daniels, supra, also has the potential to negatively impact a defendant's right to file a proper motion for postconviction relief. For example, if an ill-advised motion is filed while a defendant's direct appeal is pending and improperly ruled by the Circuit Court and the defendant later seeks to refile a proper motion when the appeal is disposed of: will he be barred from doing so under Rule 3.850(f). Fla. Crim. P. governing second or successive motion?

Rule 3.850 provides a procedural mechanism prevalently used by prisoners in this state to challenge their convictions and sentences. Therefore, there is a distinct potential for repeated incidents of defendants filing such motions while direct appeals are pending. As a consequence it is apparent that the problem presented by this case will not be limited between the immediate parties i this litigation, but has potential statewide impact that warrants the consideration of this Court.<sup>1</sup>

WHEREFORE, it is prayed that the Court acknowledge probable jurisdiction and grant petitioner the opportunity to fully pursue certiorari review in this matter,

Respectfully submitted by,

  
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3142 Thomas Drive  
Bonifay, FL 32425

1. Rule 9.120(d), Fla. R. App. P. prescribes a time period of ten (10) days for Petitioner to file his Brief for Jurisdiction. Petitioner respectfully asserts that pursuant to this court's instruction in Haag v. State, 591 So. 2d 614 (Fla. 1992), that the instant pleading is timely filed.

The notice invoking Discretionary Jurisdiction of this Court

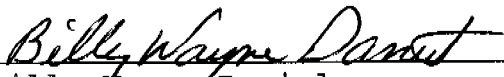
was submitted to the 1st DCA on October 1, 1997. Therefore, the ten (10) day period under Rule 9.120(d) expires on "Saturday" October 11, 1997. By depositing his Brief and Appendix in the prison mailbox on October 10, 1997, Petitioner's pleading should be considered timely filed on the authority of Haag, supra

Another factor that should be considered in measuring the timeliness of this pleading is that Petitioner was in administrative confinement (A/C) without access to his legal documents and other paraphernalia to enable him to properly compose his pleading. Petitioner diligently tried to obtain his legal documents by submitting "two" requests to the property room, and did advise of the deadline. Petitioner also made overwhelming attempts to, and practically begged officers, right up to the captain, but of no prevail. Additionally, it should be noted that the copy machine in the law library was out-of-order for four (4) days which enabled Petitioner to review proper rules in his last minute of hope.

**VERIFICATION OF DOCUMENT**

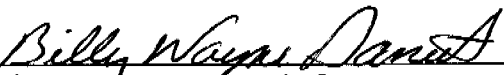
Pursuant to Fla. Stat. 92.525(2)

I, Billy Wayne Daniels, declares under the penalties of perjury, that this Jurisdictional Brief is true and correct.

  
\_\_\_\_\_  
Billy Wayne Daniels  
Petitioner, pro se

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of this Jurisdictional Brief has been furnished by U.S. Mail to Honorable Robert A. Butterworth, Attorney General, 301 Martin L. King Jr. Blvd., Tallahassee, FL 32399-1050 on October 10, 1997.

  
\_\_\_\_\_  
Billy Wayne Daniels,  
Petitioner, pro se