015

IN THE SUPREME COURT OF THE STATE OF FLORIDA

REINEL SANTIAGO,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

93822
Case No. 93,833

****

ON PETITION FOR DISCRETIONARY REVIEW FROM
THE FOURTH DISTRICT COURT OF APPEAL

****

RESPONDENT'S ANSWER BRIEF ON JURISDICTION

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases Cited **Page Number**

Other Authorities

PRELIMINARY STATEMENT

Respondent was the prosecution in the Criminal Division of the Circuit Court of the Seventeenth Judicial Circuit, in and for Broward County, Florida, and the appellant in the Florida Fourth District Court of Appeal. Petitioner was the defendant in the trial court and appellee in the District Court of Appeal.

In this brief, the parties will be referred to as they appear before this Court, except that the Appellee may also be referred to as "State" or "Prosecution."

The following symbols will be used;

PB = Petitioner's Initial Brief on Jurisdiction

R = Record on Appeal

T = Transcripts

STATEMENT OF THE CASE AND FACTS

Respondent accepts Petitioner's statement of the case and facts for purposes of determining jurisdiction in this appeal in so far as that statement presents an accurate, objective and non-argumentative recital of the procedural history and facts in the record, and subject to the additions and clarifications set forth in the argument portion of this brief which are necessary to resolve the legal issues presented upon appeal.

SUMMARY OF THE ARGUMENT

Petitioner has failed to show conflict with either the decision of any other district court of appeal or any decision of this Court within the four corners of the Fourth District's opinion. His petition for review should be denied.

ARGUMENT

PETITIONER HAS IMPROPERLY INVOKED THE JURISDICTION OF THIS COURT AS THE OPINION BELOW DOES NOT CONFLICT WITH THE DECISIONS OF THIS COURT OR WITH THE OPINIONS OF OTHER DISTRICT COURTS OF APPEAL

To properly invoke the "conflict certiorari" jurisdiction of this Court, Petitioner must demonstrate that there is "express and direct conflict" between the decision challenged therein, and those holdings of other Florida appellate courts of this Honorable Court on the same rule of law to produce a different result that other state appellate courts faced with the substantially same facts. Article V, §3(b)(3), Fla. Const. (1980); Fla.R.App.P. 9.030(a)(2)(iv). This Court has stated that "conflict between decisions must be expressed and direct, i.e., it must appeal within the four corners of the majority opinion." *Reaves v. State*, 485 So. 2d 829, 830 (Fla. 1986). A petitioner's own interpretation of "conflict" is simply not enough.

The Fourth District Court of Appeal opinion in *State v. Kern,* 23 Fla. L. Weekly D1144 (Fla. 4th DCA May 6, 1998) -- the decision upon which the case at bar rests -- holds that for certain purposes, a court may find that a defendant has been "convicted" regardless of whether or not adjudication was withheld. Petitioner argues that the Fourth District's holding conflicts with "a common understanding of Florida jurisprudence" and cites, for example, *Castillo v. State,* 590 So. 2d 458 (Fla. 3d DCA 1991) wherein the Third District Court of Appeal held that a defendant who was not "adjudicated" of a prior felony could not subsequently be convicted of the crime of carrying a firearm by a convicted felon.

Respondent respectfully submits that Petitioner's argument begs the question. Indeed, the Fourth District *Kern* opinion points out that "'conviction' is a chameleon-like term" in Florida law "which draws its meaning from statutory context." *Kern, id.,* at 1145. And although the Court noted that "the most frequent construction of a statute's use of the term 'conviction' has required a trial court's adjudication of the defendant's guilt," such is not always the case. Thus, the question before this Court is not whether the Fourth District's opinion conflicts with opinions of this Court or other districts in terms of the definition of "conviction" for all purposes; rather, the question is whether the Fourth District's opinion conflicts for the purposes of a particular statute: §322.34 Florida Statutes (1995). Clearly, it does not.

The Fourth District's opinion points out that in 1990 the Florida legislature specifically addressed the "conviction" issue with regard to motor vehicle licences by amending the existing §322.01 Florida Statutes (1989) to provide that a "conviction" includes "an admission or determination of a noncriminal traffic infraction pursuant to s. 318.14, or a judicial disposition of an offense committed under any federal law substantially conforming to the aforesaid state statutory provisions." Thus, the Fourth District said, "[t]he focus of this definition is whether an offense was committed and not on the judicial decision of whether to impose or withhold adjudication."

Finally, Petitioner argues that because the Florida sentencing guidelines make special provision for the cases in which adjudication is withheld, that is, because the guidelines define "conviction" to include all determinations of guilt, then *ipso facto,* the "common" meaning of the word "conviction" does not include such cases. However his argument is demolished by the Fourth District's reference to §318.14(10)(a) Florida Statutes (1995) which provides for specific cases in which a defendant may plead *nolo contendere* and provide proof of compliance with the licensing

statute to the court clerk. In those cases -- limited to no more than once in each year for a particular defendant, and to three times per defendant -- "adjudication shall be withheld." In short, the legislature has made ample provision for the 'oops factor' -- cases in which a defendant inadverantly or perhaps negligently is found driving with a suspended licence and would ordinarily receive a "withheld adjudication." But, says the legislature, those instances are now limited to one per year for each defendant, and no more than three in a lifetime. And other than those instances, the Fourth District rightly held the focus would be on whether the offense was committed, not whether it was adjudicated.

In conclusion, the Fourth District Court of Appeal opinions in *State v. Kern,* 23 Fla. L. Weekly D1144 (Fla. 4th DCA May 6, 1998 and *State v. Santiago,* 713 So. 2d 1127 (Fla. 4th DCA 1998) do not conflict with the decisions of this Court or with any opinion of any other district court of appeal. The arguments advanced by Petitioner in his jurisdictional brief go far beyond the four corners of the opinion, and attempt to show that the Fourth District Court of Appeal was "wrong" in its holding. However, as stated above, Petitioner's interpretation is simply not enough. Since there is no conflict jurisdiction, this Court should decline jurisdiction.

CONCLUSION

WHEREFORE based on the foregoing arguments and the authorities cited herein, Respondent respectfully contends that this Court should refuse to accept jurisdiction in this cause.

Respectfully submitted,

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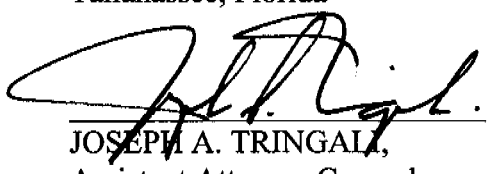

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing "Respondent's Answer Brief on Jurisdiction" has been sent by sent by United States mail to: H. DOHN WILLIAMS, JR., Esq., Attorney for Petitioner, P.O. Box 1722, Fort Lauderdale, FL 33302 on October 7, 1998.

JOSEPH A. TRINGALI
Assistant Attorney General
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