

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v.

FSC Case No.
2d DCA Case No. 97-00981

ROBERT ALLEN CASTERLINE,

Respondent.

_____ /

DISCRETIONARY REVIEW OF DECISION OF THE
DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

PETITIONER'S BRIEF ON JURISDICTION

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

STEPHEN D. AKE
ASSISTANT ATTORNEY GENERAL
Florida Bar No: 14087
Westwood Center
2002 North Lois Avenue, Suite 700
Tampa, Florida 33607
(813) 873-4739

COUNSEL FOR PETITIONER

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

PRELIMINARY STATEMENT. 1

STATEMENT OF THE CASE AND FACTS. 2

SUMMARY OF ARGUMENT. 5

ARGUMENT

THE SECOND DISTRICT COURT OF APPEAL’S DECISION
IN CASTERLINE V. STATE, 22 FLA. L. WEEKLY D2330 (FLA.
2D DCA OCT. 3, 1997) EXPRESSLY AND DIRECTLY CONFLICTS
WITH THIS COURT’S DECISIONS IN NOVATION V. STATE,
634 SO. 2D 607 (FLA. 1994), AND LIPPMAN V. STATE,
633 SO. 2D 1061 (FLA. 1994). 6

CONCLUSION 10

CERTIFICATE OF SERVICE 10

TABLE OF AUTHORITIES

CASES

Casterline v. State,
22 Fla. L. Weekly D2330 (Fla. 2d DCA Oct. 3, 1997) 3,8

Ford Motor Co. v. Kikis,
401 So. 2d 1341 (Fla. 1981) 7

Lippman v. State,
633 So. 2d 1061 (Fla. 1994) 5,7,8

Nielsen v. City of Sarasota,
117 So. 2d 731 (Fla. 1960) 6

Novation v. State,
634 So. 2d 607 (Fla. 1994) 5,7,8

State v. Johnson,
483 So. 2d 420 (Fla. 1986) 7

MISCELLANEOUS

Art. V, § 3(b)(3), Fla. Const. 6

PRELIMINARY STATEMENT

The State will specifically refer to each document cited in the record by the name of the document and the date it was filed.

STATEMENT OF THE CASE AND FACTS

On September 17, 1984, Respondent pled guilty to two counts of sexual performance by a child and was placed on probation for fifteen years. On July 17, 1991, an affidavit of violation of probation was filed alleging three violations of Respondent's probation, including a violation of condition 8, failure to follow the probation officer's instructions to have no contact with minor children.

On August 8, 1991, the trial court conducted a hearing on Respondent's violation of probation and orally stated that he found Respondent not guilty of violating his probation. Respondent had other charges pending at the time of his revocation hearing, and during the hearing, he requested that he be released on his own recognizance. The State countered that Respondent's probation should be modified so that he would have no unsupervised contact with minors. Respondent agreed to that modification and stipulated to it in order to be released on his own recognizance. The trial court then issued an Order of Modification of Probation which indicated that Respondent had violated conditions 4 and 8 of his probation and modified his probation to include the special condition prohibiting unsupervised contact with minors.¹

On April 27, 1995, the court held a violation of probation

¹As previously stated, the court orally found that Appellant had not violated his probation.

hearing based on Respondent's alleged violation of the modified condition of probation prohibiting contact with minors. At the revocation hearing, Respondent admitted to a violation of the modified condition. The court revoked Respondent's probation and entered another Order of Modification of Probation.

On February 6, 1996, another affidavit of violation of probation was filed alleging a violation of the Order of Modification of Probation dated April 27, 1995.² On March 29, 1996, Respondent pled guilty to this violation and the trial court sentenced Respondent to fifteen years Department of Corrections with jail time credit for time served. Respondent did not file a direct appeal, but filed a Motion for Postconviction Relief on January 7, 1997.

Respondent's postconviction motion attacked the trial court's 1996 revocation of his probation based on the 1991 order which enhanced the conditions of his probation. The trial court summarily denied the motion on February 18, 1997. Respondent filed a notice of appeal from the trial court's denial of his motion on March 12, 1997. On October 3, 1997, the Second District Court of Appeal issued a majority decision reversing the trial court's denial of Respondent's motion. The Second District Court of Appeal denied Petitioner's Motion for Rehearing on

²For a thorough discussion of the significance of this fact, see Casterline v. State, 22 Fla. L. Weekly D2330, 2331-32 (Fla. 2d DCA Oct. 3, 1997) (Schoonover, A.C.J., dissenting).

October 29, 1997.

SUMMARY OF ARGUMENT

The Second District Court of Appeal's decision in the instant case expressly and directly conflicts with this Court's decisions in Novation v. State, 634 So. 2d 607 (Fla. 1994), and Lippman v. State, 633 So. 2d 1061 (Fla. 1994). The Second District Court of Appeal ruled that Respondent did not waive his double jeopardy rights when he bargained for his release in 1991 in exchange for an enhanced condition of his probation prohibiting contact with a minor. The rule of law announced by the Second District Court of Appeal conflicts with decisions by this Court finding a waiver of double jeopardy protection.

ISSUE

THE SECOND DISTRICT COURT OF APPEAL'S DECISION IN CASTERLINE V. STATE, 22 FLA. L. WEEKLY D2330 (FLA. 2D DCA OCT. 3, 1997) EXPRESSLY AND DIRECTLY CONFLICTS WITH THIS COURT'S DECISIONS IN NOVATION V. STATE, 634 SO. 2D 607 (FLA. 1994), AND LIPPMAN V. STATE, 633 SO. 2D 1061 (FLA. 1994).

This Court has authority as the highest court of the state to resolve legal conflicts created by the district courts of appeal. The Florida Constitution, article V, section 3(b)(3), authorizes this Court to review a decision of a district court of appeal that expressly and directly conflicts with a decision of another district court of appeal or with a decision of the Florida Supreme Court.

This Court has identified two basic forms of decisional conflict which properly justify the exercise of jurisdiction under section 3(b)(3) of the Florida Constitution. Either (1) where an announced rule of law conflicts with other appellate expressions of law, or (2) where a rule of law is applied to produce a different result in a case which involves "substantially the same controlling facts as a prior case. . . ." Nielsen v. City of Sarasota, 117 So. 2d 731, 734 (Fla. 1960). Furthermore, it is not necessary that a district court explicitly identify conflicting court decisions in its opinion in order to create an express conflict under section 3(b)(3). Ford Motor Co. v. Kikis, 401 So. 2d 1341 (Fla. 1981).

In Novation v. State, 634 So. 2d 607 (Fla. 1994), this Court

ruled that double jeopardy claims may be waived as part of a negotiated plea agreement. This Court found that the defendant had received the benefit of his bargain, and could not be relieved of the burden of his agreement. Id. at 608-09. In Lippman v. State, 633 So. 2d 1061 (Fla. 1994), decided only one week prior to Novation, this Court also acknowledged that a defendant may knowingly waive his double jeopardy rights in limited instances. Lippman, 633 So. 2d at 1065 (citing State v. Johnson, 483 So. 2d 420 (Fla. 1986)).

In the instant case, Respondent knowingly waived his double jeopardy rights when he bargained with the court and received the benefit of the bargain (his release on pending charges), in exchange for the "enhanced" condition of probation prohibiting contact with minors.³ Subsequently, in 1995, Respondent was charged with violating the new condition of probation prohibiting contact with minors. Respondent admitted to this violation and the court entered an order modifying Respondent's probation to include the special condition of probation prohibiting contact

³Although the Second District Court of Appeal characterizes this condition as an "enhancement," Petitioner would note that the 1991 affidavit of violation of probation alleged that Respondent violated condition of probation 8 by not complying with his probation officer's instructions prohibiting contact with minors. In addition, Respondent's 1984 order of probation allows the trial court to "rescind or modify any of the conditions of your probation" at any time. See Lippman v. State, 633 So. 2d 1061 (Fla. 1994) (McDonald, J., dissenting) (stating that a trial court should be allowed to modify terms of probation if necessary).

with minors. Respondent again violated that condition of probation and had his probation revoked in 1996. Respondent did not file a direct appeal but attacked the 1991 order modifying probation in a motion for postconviction relief.

The rule of law announced by the majority opinion in Casterline conflicts with the expression of law announced by this Court in Novation and Lippman. The Casterline court found that Respondent did not waive his double jeopardy protections when he negotiated an agreement with the court whereby he was granted his release on pending charges in exchange for the addition of a new condition of probation.

In Novation, this Court ruled that the defendant's bargained for plea waived any double jeopardy claims that may affect his convictions or sentences. Novation, 634 So. 2d at 607 (Fla. 1994). The Lippman decision also recognized that a defendant may knowingly waive his double jeopardy rights in certain instances. The majority decision in the instant case conflicts with these expressions of law. Accordingly, this Court should grant jurisdiction in the instant case and review the Second District Court of Appeal's decision.

CONCLUSION

Based on the Second District Court of Appeal's opinion, as well as the foregoing arguments and authorities, the State respectfully requests that this Honorable Court grant jurisdiction in the instant case.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

STEPHEN D. AKE
Assistant Attorney General
Florida Bar No.: 0014087
Westwood Center, Suite 700
2002 North Lois Avenue
Tampa, Florida 33607-2366
(813) 873-4739

COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Robert Allen Casterline, South Florida Reception Center, Dorm F2112L Main Unit, P.O. Box 02-8538, Miami, Florida 33102-8538, on this 14th day of November, 1997.

COUNSEL FOR PETITIONER