IN THE SUPREME COURT OF FLORIDA

RICO CARGLE,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

CASE NO. 92,031

JURISDICTIONAL BRIEF OF RESPONDENT

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PRELIMINARY STATEMENT

Respondent, the State of Florida, the Appellee in the District Court of Appeal (DCA) and the prosecuting authority in the trial court, will be referenced in this brief as Respondent, the prosecution, or the State. Petitioner, Rico Cargle, the Appellant in the DCA and the defendant in the trial court, will be referenced in this brief as Petitioner or proper name.

"PJB" will designate Petitioner's Jurisdictional Brief. That symbol is followed by the appropriate page number.

A bold typeface will be used to add emphasis. Italics appeared in original quotations, unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

The pertinent history and facts are set out in the decision of the lower tribunal, found at 22 Fla. L. Weekly D2215.

SUMMARY OF ARGUMENT

Petitioner argued: The question presented to the DCA was "one of first impression." However, rather than supporting jurisdiction, this concession highlights the fact that the cases supposedly in conflict are not on point. They did not concern the same question of law as this case.

ARGUMENT

ISSUE

IS THERE EXPRESS AND DIRECT CONFLICT BETWEEN THE DECISION BELOW AND STATE V. RHODEN (1984)OR STATE V. MONTAGUE (1996) (Restated)

Jurisdictional Criteria

Petitioner's issue statement (PJB I, 4. See PJB 8) and argument (See PJB 5-6)[1] essentially contend that this Court has jurisdiction pursuant to Fla. R. App. P. 9.030(a)(2)(A)(iv), which parallels Article V, § 3(b)(3), Fla. Const. The constitution provides, Id.:

> The supreme court ... [m]ay review any decision of a district court of appeal ... that expressly and directly conflicts with a decision of another district court of appeal or of the supreme court **on the same question of law.**

The conflict between decisions "must be express and direct" and "must appear within the four corners of the majority

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[1] Petitioner also argues that this case is one of "first impression" (PJB 3, 4-5, 7), requiring "clarif[ication]" (PJB 8). If Petitioner is suggesting that these are grounds for this Court's jurisdiction, he is mistaken. See Article V, § 3(b); Fla. R. App. P. 9.030(a).

decision." Reaves v. State, 485 So.2d 829, 830 (Fla. 1986). Accord Dept. of Health and Rehabilitative Services v. Nat'l Adoption Counseling Service, Inc., 498 So.2d 888, 889 (Fla. 1986)(rejected "inherent" or "implied" conflict; dismissed petition).

Ansin v. Thurston, 101 So. 2d 808, 810 (Fla. 1958), explained:

> It was never intended that the district courts of appeal should be intermediate courts. The revision and modernization of the Florida judicial system at the appellate level was prompted by the great volume of cases reaching the Supreme Court and the consequent delay in the administration of justice. The new article embodies throughout its terms the idea of a Supreme Court which functions as a supervisory body in the judicial system for the State, exercising appellate power in certain specified areas essential to the settlement of issues of public importance and the preservation of uniformity of principle and practice, with review by the district courts in most instances being final and absolute.

Accordingly, the determination of conflict jurisdiction distills to whether the District Court's decision reached a result opposite State v. Rhoden, 448 So.2d 1013 (Fla. 1984) or State v. Montague, 682 So.2d 1085 (Fla. 1996), on the same question of law as those cases.

The decision below is not in "express and direct" conflict with Rhoden or Montague.

There is no conflict on which to base jurisdiction here because the decision below was not **"on the same question of law"** as Rhoden or Montague. Here, the question of law was whether the provisions of the Criminal Reform Act of 1996, codified as

Section 924.051, Fla. Stat., "apply to the sentencing process by which juveniles are sentenced as adults," 22 Fla. L. Weekly D2216. The DCA held that it applied to the sentencing of Petitioner, age 17 at the time of the offense, age 18 at the time of the sentencing hearing, and charged as an adult, 22 Fla. L. Weekly D2215. Neither Rhoden nor Montague concerned that applicability. Therefore, there is no conflict.

Thus, Petitioner's argument (at PJB 3, 4-5, 7) that this case is one of "first impression" conceded that Rhoden and Montague are cases of "no impression" on the "question of law" presented to the DCA here. Therefore, there can be no conflict with those cases.

Indeed, the sentencings in both Rhoden (**1984**) and Montague, reviewing Montague v. State, 656 So.2d 508 (Fla. 2d DCA **1995**), transpired well-before the July 1, 1996, effective date of Section 924.051, rendering those cases clearly inapplicable to the question here, i.e., the scope of Section 924.051.

Moreover, this Court's Montague's decision mandated the affirmance of a trial court's sentence, a result consistent with the one here.

CONCLUSION

Based on the foregoing reason, the State respectfully requests this Honorable Court decline to exercise jurisdiction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing JURISDICTIONAL BRIEF OF RESPONDENT has been furnished by U.S. Mail to Kathleen Stover, Esq., Assistant Public Defender, Leon County Courthouse, Suite 401, 301 South Monroe Street, Tallahassee, Florida 32301, this 5th day of January, 1998.

Stephen R. White
Attorney for the State of Florida

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