

IN THE SUPREME COURT OF FLORIDA

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FILED

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CLERK, SUPREME COURT

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Chief Deputy Clerk

CASE NO. 93,439

STATE OF FLORIDA,

Petitioner,

v.

CLINTON R. WOODS,

Respondent.

JURISDICTIONAL BRIEF OF PETITIONER

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PRELIMINARY STATEMENT

Petitioner, 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 Petitioner, the prosecution, or the State. Respondent, Clinton R. Woods, the Appellant in the DCA and the defendant in the trial court, will be referenced in this brief as Respondent or proper name.

This brief is typed in 12 point Courier New, a font that is not proportionately spaced.

STATEMENT OF THE CASE AND FACTS

The district court's opinion, Woods v. State, 23 Fla. L. Weekly D1422 (Fla. 1st DCA June 10, 1998), is attached as an Appendix. Respondent was convicted of three counts of battery on a law enforcement officer and three counts of resisting an officer with violence based on a single criminal episode. Woods, 23 Fla. L. Weekly at D1422. The District Court, relying on its decisions in Pierce v. State, 681 So. 2d 873 (Fla. 1st DCA 1996) and Wells v. State, 22 Fla. L. Weekly D2010 (Fla. 1st DCA August 18, 1997), rev. granted, 705 So. 2d 10 (Fla. 1997), held that only one conviction for resisting an officer with violence was permitted and reversed two of Respondent's convictions. Id. The court acknowledged conflict with Coleman v. State, 569 So. 2d 870 (Fla. 2d DCA 1990), and Wallace v. State, 689 So. 2d 1159 (Fla. 4th DCA), rev. granted, 699 So. 2d 1377 (Fla. 1997). Id.

SUMMARY OF ARGUMENT

The District Court held that Respondent could only be convicted of one count of resisting an officer with violence in connection with a single criminal episode and reversed two of Respondent's three convictions of resisting an officer with violence. In Wallace v. State, 689 So. 2d 1159 (Fla. 4th DCA), rev. granted, 699 So. 2d 1377 (Fla. 1997), and Coleman v. State, 569 So. 2d 870 (Fla. 2d DCA 1990), the courts held that a defendant can be convicted for resisting arrest with violence for each officer that he resists and did not limit the number of convictions to one in a single episode. The holding in Woods is in direct conflict with the holdings of Wallace and Coleman. This Court should accept jurisdiction to resolve the conflict between the district courts of appeal.

ARGUMENT

ISSUE

WHETHER THE DISTRICT COURT'S DECISION CONFLICTS WITH THE OPINIONS IN WALLACE V. STATE, 689 SO. 2d 1159 (FLA. 4TH DCA 1997), REV. GRANTED, 699 SO. 2D 1377 (FLA. 1997) AND COLEMAN V. STATE, 569 SO. 2D 870 (FLA. 2D DCA 1990).

The District Court's decision in this case directly conflicts with the Fourth District's opinion in Wallace v. State, 689 So. 2d 1159 (Fla. 4th DCA 1997), rev. granted, 699 So. 2d 1377 (Fla. 1997), and the Second District's opinion in Coleman v. State, 569 So. 2d 870 (Fla. 2d DCA 1990). The District Court agreed that conflict exists. Therefore, this Court should exercise discretionary jurisdiction to review the decision in this case and resolve the conflict with Wallace and Coleman.

Pursuant to article V, section 3(b)(3), Florida Constitution, and Florida Rule of Appellate Procedure 9.030(a)(2)(A)(iv), this Court has jurisdiction to review a decision 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 District Court's holding in this case that only one conviction of resisting arrest with violence is permitted in connection with a single criminal episode or incident directly conflicts with the Wallace and Coleman holdings that multiple convictions are permitted. Accordingly, this Court has jurisdiction to hear this appeal.

Respondent was convicted of three counts of battery on a law enforcement officer and three counts of resisting an officer with

violence. Woods, 23 Fla. L. Weekly at D1422. The District Court held that Respondent could only be convicted of one count of resisting an officer with violence in connection with a single criminal episode and reversed two of Respondent's convictions of resisting an officer with violence. Id. In reaching this conclusion, the District Court relied on its decisions in Pierce v. State, 681 So. 2d 873 (Fla. 1st DCA 1996) and Wells v. State, 22 Fla. L. Weekly D2010 (Fla. 1st DCA August 18, 1997), rev. granted, 705 So. 2d 10 (Fla. 1997). Pierce and Wells held that a defendant can only be convicted of one count of resisting an officer with violence in connection with a single criminal episode. The District Court acknowledged that its opinion conflicts with Wallace and Coleman. Review of Wells is pending before this Court.

As the District Court acknowledged, its opinion is in direct conflict with Wallace. In Wallace, the court affirmed the defendant's convictions of two counts of resisting an officer with violence stemming from an altercation with his sister and two police officers. Wallace, 689 So. 2d at 1160. The court rejected Wallace's argument that Pierce controlled and required reversal of one of the convictions. While Pierce held that because section 843.01, Florida Statutes refers to "any" officer, only one conviction is permitted in connection with a single episode, Pierce, 681 So. 2d at 874, Wallace said that "any" modifies the class of persons who may be classified as an officer under the statute and does not prevent prosecution for each

crime. Wallace, 689 So. 2d at 1161. The court said the "crime of resisting an officer with violence is like theft, in that the statutory unit of prosecution is violence done to any single officer" and held that the statute "undeniably demonstrates that the intended prosecutorial unit is any individual officer who is resisted." Id. at 1161. The court noted,

Indeed to hold otherwise simply because the two separate acts of violence occurred during a spree of violent resistance of peace officers is to give violent persons no incentive to refrain from battering additional officers after they have committed an act of violence on the first officer. Id. at 1161-62.

Wallace said the Legislature intended that a defendant should be convicted for each crime committed during a single episode. Id. at 1162. Wallace certified conflict with the First District's contrary holding in Pierce. Id. at 1163. Review of Wallace is pending before this Court.

Likewise, the First District's opinion conflicts with the Second District's opinion in Coleman. Coleman, like Respondent, was convicted of three counts of resisting an officer with violence when he fought three officers. Coleman, 569 So. 2d at 871. The court held that the statute "proscribes the act of resisting any officer by doing violence to the person of such officer and not the act of resisting arrest" and affirmed all three convictions. (emphasis in original). Id. at 871-72.

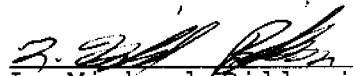
Further, since this Court has accepted jurisdiction over Wells and the District Court relied on Wells in reaching its conclusion, this Court has jurisdiction pursuant to Jollie v. State, 405 So. 2d 418, 420 (Fla. 1981) (court has jurisdiction

when district court "cites as controlling authority a decision that is either pending review in or has been reversed by this Court") to hear this case. This Court has accepted review of Wells, controlling authority cited by the District Court, and Wallace, contrary authority acknowledged by the District Court. This Court should exercise its discretionary jurisdiction to review this case as well.

The District Court held in this case that Respondent can only be convicted of one count of resisting an officer with violence in connection with a single episode. This holding is in direct conflict with the Fourth District's holding in Wallace and the Second District's holding in Coleman, which says a defendant can be convicted of resisting an officer with violence for each officer that he or she resisted. This Court should exercise its discretionary jurisdiction to resolve the conflict on this point of law.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing JURISDICTIONAL BRIEF OF PETITIONER has been furnished by U.S. Mail to Mark E. Walker, Assistant Public Defender, Leon County Courthouse, Suite 401, 301 South Monroe Street, Tallahassee, Florida 32301, this 20th day of July, 1998.



L. Michael Billmeier
Attorney for the State of
Florida/Petitioner

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