

IN THE SUPREME COURT OF FLORIDA

CASE NO. 93,648

LAZARO GONZALEZ,

Petitioner,

-vs-

THE STATE OF FLORIDA,

Respondent.

FILED

SID J. WHITE

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CLERK, SUPREME COURT
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ON PETITION FOR DISCRETIONARY REVIEW FROM
THE DISTRICT COURT OF APPEAL OF FLORIDA,
THIRD DISTRICT

BRIEF OF RESPONDENT ON JURISDICTION

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INTRODUCTION

The Petitioner, LAZARO GONZALEZ, was the Defendant in the trial court and the Appellant in the Third District Court of Appeal. The State of Florida was the prosecution in the trial court and the Appellee in the Third District Court of Appeal. In this brief, the parties will be referred to as they stood in the trial court. The symbol "A." will refer to the documents attached to the Petitioner's appendix.

CERTIFICATE OF FONT AND TYPE SIZE

The undersigned has utilized 12 point courier in preparing this brief.

STATEMENT OF THE CASE AND FACTS

The Defendant appealed the summary denial of his motion for postconviction relief to the Third District Court of Appeal. (A. 1). The Third District affirmed the lower court because "Defendant is precluded from collaterally attacking his plea bargain because he himself failed to abide by the terms to which he agreed." (A. 1).

SUMMARY OF THE ARGUMENT

The Third District's opinion is not in conflict with the cases relied upon by the Defendant. The Third District's opinion holds that the Defendant was estopped from collaterally attacking his plea bargain where he failed to abide by the terms to which he agreed. By contrast, none of the cases relied upon by the Defendant address this specific issue. Thus, no conflict jurisdiction exists.

ARGUMENT

THE DECISION OF THE THIRD DISTRICT COURT OF APPEAL IS NOT IN DIRECT OR EXPRESS CONFLICT WITH HOLT V. STATE, 653 SO. 2D 1120 (FLA. 2D DCA 1995; STATE V. LEROUX, 689 SO. 2D 235 (FLA. 1996); OR TRENARY V. STATE, 453 SO. 2D 1132 (FLA. 2D DCA 1984).

In his brief, the Petitioner claims that the Third District's opinion is in conflict with an established decision of this Court as well as decisions of other district courts of appeal on the issue of whether a defendant's failure to abide by the terms of a plea agreement to which he specifically agreed estops him from collaterally attacking the plea agreement. However, none of the cases identified by the Petitioner are in conflict with the Third District's opinion, and this Court should therefore decline to accept discretionary jurisdiction in this matter. See Reaves v. State, 485 So. 2d 829 (Fla. 1986) ("conflict must be express and direct, i.e., it must appear within the four corners of the majority decision....").

In the instant case, the Third District specifically held that the Defendant was estopped from collaterally attacking his plea bargain because he failed to abide by the terms to which he agreed. (citing Novaton v. State, 610 So. 2d 726 (Fla. 3d DCA 1992); State v. Frazier, 697 So. 2d 944 (Fla. 3d DCA 1997); Madrigal v. State,

545 So. 2d 392, 935 n. 2 (Fla. 3d DCA 1989)). None of the cases relied upon by the Defendant for conflict, however, address this issue.

For example, in Holt v. State, the Second District held that allegations that counsel misinformed the defendant about the sentence that would be imposed was entitled to a hearing on his motion for postconviction relief. 653 So. 2d at 1120-21. In State v. Leroux, this Court held that the defendant's negative response to the trial court's question of whether anything had been promised to him to induce his guilty plea did not conclusively refute his postconviction relief claim that his negotiated plea was the product of trial counsel's alleged misrepresentations and, therefore, an evidentiary hearing was required. 689 So. 2d at 237-38. Finally, in Trenary v. State, the Second District held that where a defendant enters a plea in reasonable reliance on his attorney's advice, which in turn was based on the attorney's honest mistake or misunderstanding, the defendant should be allowed to withdraw his plea. 453 So. 2d at 1133-34.

Since none of the cases relied upon by the Defendant address the specific issue addressed by the Third District in this case, it is clear that no conflict exists between those cases and the Third District's opinion below. Again, this Court should decline to

accept discretionary jurisdiction.

CONCLUSION

WHEREFORE, based upon the authorities and arguments cited herein, this Court should decline to exercise its discretionary jurisdiction.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief of Respondent was mailed this 17th day of September, 1998, to Lazaro Gonzalez, DC# 196774, at Glades Correctional Institution, 500 Orange Avenue Circle, Belle Glade, Florida 33430-5221.

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