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IN THE SUPREME COURT OF FLORIDA

GABRIEL JOCK KENON,)
)
Petitioner,)
)
versus)
)
STATE OF FLORIDA,)
)
Respondent.)
_____)

DCA CASE NO. 97-3558

S.CT. CASE NO. 94,991

ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

PETITIONER'S BRIEF ON JURISDICTION

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

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TABLE OF CONTENTS

	<u>PAGE NO.</u>
TABLE OF CITATIONS	ii
STATEMENT OF THE CASE AND FACTS	1
SUMMARY OF THE ARGUMENT	4
ARGUMENT	
THIS COURT HAS JURISDICTION TO REVIEW THE INSTANT CASE PURSUANT TO <u>JOLLIE V. STATE,</u> 405 SO. 2D 418 (FLA. 1981).	5
CONCLUSION	7
CERTIFICATE OF SERVICE	7

TABLE OF CITATIONS

<u>CASES CITED</u>	<u>PAGE NO.</u>
<u>Gentry v. State</u> 437 So. 2d 1097 (Fla. 1983)	2, 5
<u>Jollie v. State,</u> 405 So. 2d 418 (Fla. 1981)	i, 4, 5, 6
<u>Kenon v. State</u> 24 Fla. L Weekly D322 (Fla. 5th DCA January 29, 1999)	2, 5
<u>Maddox v. State</u> 708 So. 2d 617 (Fla. 5th DCA), <u>rev. granted,</u> 718 So. 2d 169 (Fla. 1998)	2, 3, 5
<u>Watkins v. State</u> 705 So. 2d 938 (Fla. 5th DCA 1998)	3, 5
<u>White v. State</u> 714 So. 2d 440 (Fla. 1998)	2
 <u>OTHER AUTHORITIES</u>	
Section 775.0823, Florida Statutes (1997)	2

IN THE SUPREME COURT OF FLORIDA

GABRIEL JOCK KENON,)
)
 Petitioner,) DCA CASE NO. 97-3558
)
versus)
)
STATE OF FLORIDA,) S.CT. CASE NO. _____
)
 Respondent.)

)

STATEMENT OF THE CASE AND FACTS

A jury found the petitioner guilty of count I, attempted second-degree murder with a firearm (attempted first-degree murder with a firearm had been charged); count II, attempted first-degree murder of a law enforcement officer with a firearm; and count III, carrying a concealed firearm. (R443-446; T684-686; R512-517.)* He was adjudged guilty and sentenced as a habitual violent felony offender on the attempted second-degree murder (count I) and on the attempted first-degree murder of a law enforcement officer (count II), to life in prison, with the three-year mandatory term for use of a firearm and the

* "R" means "record," and refers to the documents filed with the clerk; "T" refers to the trial transcript; and "S" refers to the sentencing transcript.

discretionary fifteen-year violent offender minimum on count I, and a consecutive life sentence and consecutive minimums on count II, with a five-year concurrent guidelines term for count III, carrying a concealed firearm.

The petitioner appealed his convictions and sentences to the Fifth District Court of Appeal. (R551-552.) He argued first that conviction for attempted second-degree murder was improper because such a crime is logically impossible. Second, he argued certain sentencing errors, that is, (1) that section 775.0823, Florida Statutes (1997), requires that sentencing for attempted second-degree murder of a law enforcement officer be according to the guidelines; (2) that attempted second-degree murder with a firearm is a first-degree felony and a level 7 offense, not a level 9 offense as scored; (3) that scoresheet points for possession of a firearm were improper; according to White v. State, 714 So. 2d 440 (Fla. 1998); and (4) that the three-year and the fifteen-year minimum for a given offense must be concurrent.

The Fifth District Court rejected these arguments in Kenon v. State, 24 Fla. L Weekly D322 (Fla. 5th DCA January 29, 1999), citing Gentry v. State, 437 So. 2d 1097 (Fla. 1983); Maddox v. State, 708 So. 2d 617 (Fla. 5th DCA), rev. granted, 718 So. 2d

169 (Fla. 1998); and Watkins v. State, 705 So. 2d 938 (Fla. 5th DCA 1998).

A notice to invoke this court's discretionary jurisdiction was timely filed on February 24, 1999.

SUMMARY OF THE ARGUMENT

This honorable court has discretionary jurisdiction pursuant to Jollie v. State, 405 So. 2d 418 (Fla. 1981), to review the instant case, where the Fifth District Court of Appeal cited in its opinion to a case currently pending before this court.

ARGUMENT

THIS COURT HAS JURISDICTION TO REVIEW
THE INSTANT CASE PURSUANT TO JOLLIE V.
STATE, 405 SO. 2D 418 (FLA. 1981).

On appeal to the Fifth District Court of Appeal, the petitioner argued that the crime of attempted second-degree murder does not logically exist, that according to Florida law the sentence for attempted murder of a law enforcement officer must be according to the guidelines, that attempted second-degree murder with a firearm is a level 7 offense, and that the mandatory minimum terms for each individual conviction should be served concurrently with each other.

On January 29, 1999, the Fifth District Court issued its opinion affirming the petitioner's convictions and sentences. Kenon v. State, 24 Fla. L. Weekly D322 (Fla. 5th DCA January 29, 1999). (Appendix.) In rejecting the arguments on appeal, the district court cited Gentry v. State, 437 So. 2d 1097 (Fla. 1983), which concludes that attempted second-degree murder is a general intent crime; Watkins v. State, 705 So. 2d 938 (Fla. 5th DCA 1998), which determines that the crime of attempted second-degree murder exists in Florida; and Maddox v. State, 708 So. 2d 617 (Fla. 5th DCA), rev. granted, 718 So. 2d 169 (Fla. 1998),

which holds that no sentencing error may be argued on appeal unless preserved below.

Through Maddox, this honorable court has discretionary jurisdiction to accept the instant case pursuant to Jollie v. State, 405 So. 2d 418 (Fla. 1981).

CONCLUSION

The petitioner respectfully requests that this honorable court exercise its discretionary jurisdiction and accept the instant case for review.

Respectfully submitted,

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

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CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon the Honorable Robert A. Butterworth, Attorney General, 444 Seabreeze Blvd, Fifth Floor, Daytona Beach, FL 32118, in his basket at the Fifth District Court of Appeal, and mailed to Gabriel Jock Kenon, Inmate No. A-372356, #C-2116, Santa Rosa Correctional Institution, 5850 E. Milton Road, Milton, FL 32583, on this 8th day of March, 1999.

Anne Moorman Reeves
ANNE MOORMAN REEVES
Assistant Public Defender

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 Petitioner,) DCA CASE NO. 97-3558
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STATE OF FLORIDA,) S. CT. CASE NO. _____
)
 Respondent.)

)

A P P E N D I X

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JANUARY TERM 1999

GABRIEL JOCK KENON,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

NOT FINAL UNTIL THE TIME EXPIRES
TO FILE REHEARING MOTION, AND,
IF FILED, DISPOSED OF.

CASE NO. 97-3558 ✓

RECEIVED

JAN 29 1999

Opinion filed January 29, 1999

Appeal from the Circuit Court
for Orange County,
Jay Paul Cohen, Judge.

PUBLIC DEFENDER'S OFFICE
7th CIR. APP. DIV.

James B. Gibson, Public Defender,
and Anne Moorman Reeves, Assistant
Public Defender, Daytona Beach,
for Appellant.

Robert A. Butterworth, Attorney
General, Tallahassee, and Wesley
Heidt, Assistant Attorney General,
Daytona Beach, for Appellee.

PER CURIAM.

AFFIRMED on the authority of Gentry v. State, 437 So. 2d 1097 (Fla. 1983);
Maddox v. State, 708 So. 2d 617 (Fla. 5th DCA), rev. granted, 718 So. 2d 169 (Fla. 1998);
Watkins v. State, 705 So. 2d 938 (Fla. 5th DCA 1998).

DAUKSCH, GOSHORN and HARRIS, JJ., concur.

IN THE SUPREME COURT OF FLORIDA

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 Petitioner,) DCA CASE NO. 97-3558
)
 versus)
)
 STATE OF FLORIDA,) S.C.T. CASE NO. _____
)
 Respondent.)
 _____)

CERTIFICATE OF FONT

I HEREBY CERTIFY that the size and style of type used in this brief is 12 point Courier new, a font that is not proportionately spaced.

Respectfully submitted,

JAMES B. GIBSON
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