

ORIGINAL

IN THE SUPREME COURT OF FLORIDA

FILED

SID J. WHITE

MAY 10 1999

CASE NO. 95,325

CLERK, SUPREME COURT
By B. J. R.
Chief Deputy Clerk

WILLIAM SHAUN JORDAN

Petitioner,

-vs-

THE STATE OF FLORIDA,

Respondent.

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

Respondent, THE STATE OF FLORIDA, was the prosecution in the trial court and Appellee in the District Court of Appeal of Florida, Third District. Petitioner, WILLIAM SHAUN JORDAN, was the defendant in the trial court and the Appellant in the District Court of Appeal. The parties shall be referred to as they stand in this Court or as they stood in the trial court. The symbol (App.) will refer to the appendix to the Petitioner's brief on jurisdiction.

CERTIFICATE OF FONT AND TYPE SIZE

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

STATEMENT OF THE CASE AND FACTS

Respondent accepts the Petitioner's rendition of the statement of the case and facts for purposes of this jurisdictional brief with the following additions:

In denying the Petitioner's Motion for Rehearing and Certification, the Third District Court of Appeal declined to certify direct conflict with the Fifth District in Maddox v. State, 708 So. 2d 617 (Fla. 5th DCA 1998) (en banc), rev.grt, 718 So. 2d 169 (Fla. July 7, 1998, Case No: 92-805) explaining:

[r]esolution of that conflict would not affect the outcome of this appeal. Under the Fifth District rule in Maddox, an unobjected-to sentencing error can never be fundamental error, id., and if this case were pending in the Fifth District, the judgment would be affirmed. Thus, under either district's rule, the defendant is entitled to no relief.

(App. A, p. 3)

QUESTION PRESENTED

WHETHER THE LOWER COURT'S DECISION CONFLICTS WITH THE DECISION OF THE FIFTH DISTRICT COURT OF APPEAL IN MADDOX V. STATE, 708 SO. 2d 617 (Fla. 5th DCA 1998) (EN BANC), REV. GRT, CASE NO: 92,805?

SUMMARY OF THE ARGUMENT

The issue in the instant case is whether failure to timely file written reasons for a departure sentence, in the absence of an objection or timely 3.800(b) motion, can be reviewed as fundamental error. The Third District held that failure to timely file written reasons for departure is not fundamental error. Likewise, the Fifth District, in Maddox, held that an unobjected to sentencing error can never be treated as fundamental error. Thus, the failure to timely file written reasons for departure is not fundamental error under Maddox. Both districts agree that this sentencing issue is not fundamental. Therefore, no express and direct conflict can be said to exist in the instant situation.

However, if this Court were to determine that conflict exists based on a broader sentencing issue, this Court has the discretion to review this matter because the decision of the lower court in Jordan v. State, __ So. 2d __, 23 Fla. L. Weekly D2130 (Fla. 3d DCA September 16, 1998) expressly and directly conflicts with a decision of the Fifth District in Maddox v. State, 708 So. 2d 617 (Fla. 5th DCA 1998 (en banc), rev.grt, 718 So. 2d 169 (Fla. July 7, 1998, Case No: 92-805). However, there is no need for this Court to do so, because as the Third District Court of Appeal expressly found, resolution of the conflict would make absolutely no difference in the Petitioner's case. Under either district's rule, the defendant is entitled to no relief.

ARGUMENT

THE LOWER COURT'S DECISION DOES NOT
CONFLICT WITH THE DECISION OF THE FIFTH
DISTRICT COURT OF APPEAL IN MADDOX V.
STATE, 708 SO. 2d 617 (Fla. 5th DCA
1998) (EN BANC), REV.GRT, CASE NO: 92,805

The Petitioner contends that this Court has jurisdiction to review this matter because the decision of the lower court expressly and directly conflicts with a decision of the Fifth District in Maddox v. State, 708 So. 2d 617 (Fla. 5th DCA 1998 (en banc), rev.grt, 718 So. 2d 169 (Fla. July 7, 1998, Case No: 92-805). Petitioner, however, is mistaken.

The issue in the instant case is whether failure to timely file written reasons for a departure sentence, in the absence of an objection or timely 3.800(b) motion, can be reviewed as fundamental error. In Jordan v. State, ___ So. 2d ___, 23 Fla. L. Weekly D2130 (Fla. 3d DCA September 16, 1998), the Third District acknowledged that some sentencing errors can be treated as fundamental error that could be addressed on appeal despite the absence of an objection in the trial court. However, the Third District held that failure to timely file written reasons for departure is not fundamental error. Id. Likewise, the Fifth District, in Maddox, held that an unobjected to sentencing error can never be treated as fundamental error. Thus, the failure to timely file written reasons for departure is not fundamental error under Maddox. Both districts agree that this sentencing issue is not fundamental.

Therefore, no express and direct conflict can be said to exist in the instant situation.

However, if this Court were to determine that conflict exists based on a broader sentencing issue, this Court has the discretion to review this matter pursuant to Art V, §3(b)(3), Fla. Const. and Fla. R. App. P. 9.030(a)(2)(A)(vi). However, this Court is not required to review this matter.

In Jordan, the Third District acknowledged that sentencing errors can be treated as fundamental error that could be addressed on appeal despite the absence of an objection in the trial court. However, the Third District held that Jordan's claim that his departure sentence must be reversed because the trial court failed to timely file written reasons was not preserved for appellate review by an objection at sentencing or the timely filing of a 3.800(b) motion. Id. Any error in the trial court's late filing was not prejudicial. Id. By contrast, in Maddox, the Fifth District held that an unobjected to sentencing errors can never be treated as fundamental error. Maddox, supra.

In denying the Petitioner's Motion for Rehearing and Certification, the Third District Court of Appeal declined to certify direct conflict with the Fifth District in Maddox v. State, 708 So. 2d 617 (Fla. 5th DCA 1998 (en banc), rev.grt, 718 So. 2d 169 (Fla. July 7, 1998, Case No: 92-805) explaining:

[r]esolution of that conflict would not affect the outcome of this appeal. Under the Fifth District rule in Maddox, an unobjected-to sentencing error can never be fundamental error, id., and if this case were pending in

the Fifth District, the judgment would be affirmed. Thus, under either district's rule, the defendant is entitled to no relief.

(App. A, p. 3)

Consequently, as resolution of this conflict will have absolutely no effect on the Petitioner's case, there is no need for this Court to exercise its discretion to review this matter.

CONCLUSION

WHEREFORE, based on the preceding authorities and arguments, Respondent respectfully requests that the Court deny jurisdiction to review this cause.

Respectfully Submitted,

ROBERT A. BUTTERWORTH
Attorney General



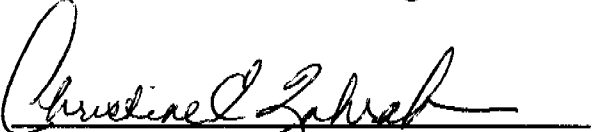
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 7 day of May, 1999, to Marti Rothenberg, 1320 NW 14th Street, Miami, Fl 33125.



CHRISTINE E. ZAHRALBAN
Assistant Attorney General