

IN THE SUPREME COURT OF FLORIDA

FILED
DEBBIE CAUSSEUX

AUG 18 1999

DEREK MAXWELL,

Petitioner,

ORIGINAL

CLERK, SUPREME COURT

By 

v.

CASE NO. 95,995

STATE OF FLORIDA,

Respondent.

ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

JURISDICTIONAL BRIEF OF RESPONDENT

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TABLE OF AUTHORITIES

CASES:

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Speed v State,
732 So. 2d 17 (Fla. 5th DCA 1999) 2,4

OTHER:

Art. V, § (3) (b) (3), Fla. Const. 4

CERTIFICATE OF FONT AND TYPE SIZE

The undersigned counsel certifies that this brief was typed using 12 point Courier New, a font that is not proportionately spaced.

STATEMENT OF FACTS

Maxwell's conviction and sentence were affirmed without opinion by the Fifth District Court of Appeal. Maxwell v. State, 732 So. 2d 1209 (Fla. 5th DCA 1999). In so holding, the district court found this case to be controlled by its recent decision in Speed v State, 732 So. 2d 17 (Fla. 5th DCA 1999).

SUMMARY OF ARGUMENT

In deciding this case, the district court relied on its recent opinion in Speed v. State. A petition for review of Speed is presently pending before this Court (case # 95,706). Should this Court grant review in Speed, the Court would also have jurisdiction to review the instant case.

As a practical matter, however, it may be more prudent to hold this petition for review in abeyance until this same issue is resolved in other pending cases.

ARGUMENT

THIS COURT SHOULD DECLINE TO ACCEPT
JURISDICTION OF THIS CASE UNLESS IT
ACCEPTS JURISDICTION IN SPEED.

This Court has jurisdiction under article V, section (3) (b) (3) of the Florida Constitution where a decision of a district court "expressly and directly conflicts" with a decision of this Court or another district court. Where the district court's decision is a per curiam opinion which cites as controlling law a decision that is either pending review in or has been reversed by this Court, this Court has the discretion to accept jurisdiction. Jollie v. State, 405 So. 2d 418, 420 (Fla. 1981).

Here, the district court found this case to be controlled by its recent decision in Speed v. State, 732 So. 2d 17 (Fla. 5th DCA 1999). A petition for review of Speed is presently pending before this Court (case # 95,706). Should this Court grant review in Speed, jurisdiction would be appropriate in this case as well.

However, if this Court declines to accept jurisdiction in Speed, then it must decline jurisdiction here also, as the district court's limited per curiam affirmed opinion does not facially conflict with any other case.. See Harrison v. Hyster Co., 515 So. 2d 1279 (Fla. 1987).

Additionally, the State notes that this same issue -- the constitutionality of the Prison Releasee Reoffender Act -- is presently pending review in numerous other cases in this Court.

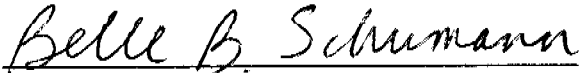
See, e.g., State v. Cotton, case # 94,996. Accordingly, the State submits that the interests of judicial economy, as well as fairness to this defendant, can best be served by holding this petition for review in abeyance pending resolution of this issue in the other cases. Numerous cases involving this issue will be ripe for review by this Court in the near future, and little purpose would be served by full briefing in all of them.


CONCLUSION

Based on the arguments and authorities presented herein, respondent respectfully requests this honorable Court decline to accept jurisdiction of this case unless it accepts jurisdiction in Speed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above Jurisdictional Brief has been furnished by hand delivery to Dee Ball, Assistant Public Defender, 112 Orange Avenue, Suite A, Daytona Beach, Florida 32114, this 16th day of August, 1999.



Kristen L. Davenport
Assistant Attorney General

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DEREK MAXWELL,

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v.

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STATE OF FLORIDA,

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RESPONDENT'S APPENDIX

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mwl

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

JANUARY TERM 1999

no

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

DEREK MAXWELL,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

CASE NO. 98-3460

L.C.T. 98-33796 CFAE.

Opinion filed May 21, 1999

Appeal from the Circuit
Court for Volusia County,
Richard B. Orfinger, Judge.

James B. Gibson, Public Defender, and
Dee Ball, Assistant Public Defender,
Daytona Beach for Appellant.

Robert A. Butterworth, Attorney General,
Tallahassee, and Kristen L. Davenport,
Assistant Attorney General,
Daytona Beach, for Appellee.

PER CURIAM.

AFFIRMED.

See *Speed v. State*, 1999 WL 235192 (Fla. 5th DCA 1999).

COBB, HARRIS, and THOMPSON, JJ., concur.

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