

IN THE SUPREME COURT OF FLORIDA

FILED
DEBBIE CAUSSEAU

JUL 29 1999

CLERK, SUPREME COURT
By _____

SHAWN WASHINGTON,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

CASE NO. 96,028

AMENDED JURISDICTIONAL BRIEF OF RESPONDENT

✓
ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

JAMES W. ROGERS
ASSISTANT ATTORNEY GENERAL
FLORIDA BAR NO. 325791

OFFICE OF THE ATTORNEY GENERAL
THE CAPITOL
TALLAHASSEE, FL 32399-1050
(850) 414 3300

COUNSEL FOR RESPONDENT

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PRELIMINARY STATEMENT

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

"PJB" will designate Petitioner's Jurisdictional Brief. That symbol is followed by the appropriate page number.

This brief has been amended to include certification that it was prepared using New Courier 12. A bold typeface will be used to add emphasis. Italics appeared in original quotations, unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

The petitioner's statement of the case and facts is incomplete. The district court affirmed without comment, citing to three cases as examples:

AFFIRMED. See, e.g., Baskin v. State, No. 98-969, (Fla. 1st DCA Apr. 27, 1999); Leaks v. State, 23 Fla. L. Weekly D1997 (Fla. 2d DCA Aug. 26, 1998); Scott v. State, 722 So.2d 256 (Fla. 5th DCA 1998).

A copy of the decision in slip opinion form is attached. It is scheduled to be reported at 732 So.2d 1225.

SUMMARY OF ARGUMENT

The district court below did not certify this case and petitioner has not shown that the decision below is in direct and express conflict with decisions of this Court or of another

district court. Arguendo, if Jollie v. State, 405 So.2d 418 (Fla. 1981) is applicable, petitioner's remedy was to bring this to the attention of the district court by seeking a stay of the mandate and retention of jurisdiction below pending this Court's resolution of Scott v. State, 722 So.2d 256 (Fla. 5th DCA 1998), review pending, case no. 94,701. Discretionary review should be denied.

ARGUMENT

ISSUE

SHOULD THIS COURT GRANT DISCRETIONARY REVIEW
PURSUANT TO JOLLIE V. STATE, 405 SO.2D 418 (FLA
1981)? (Restated)

Jurisdictional Criteria

Petitioner contends that this Court has conflict jurisdiction. Article V, § 3(b)(3), of the Florida Constitution provides:

The supreme court ... [m]ay review any decision of a district court of appeal ... 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 conflict between decisions "must be express and direct" and "must appear within the four corners of the majority decision." Reaves v. State, 485 So.2d 829, 830 (Fla. 1986). Accord Dept. of Health and Rehabilitative Services v. Nat'l Adoption Counseling Service, Inc., 498 So.2d 888, 889 (Fla. 1986) (rejected "inherent" or "implied" conflict; dismissed petition). Neither the record, nor a concurring opinion, nor a dissenting opinion can be used to establish jurisdiction. Reaves,

supra; Jenkins v. State, 385 So.2d 1356, 1359 (Fla. 1980) ("regardless of whether they are accompanied by a dissenting or concurring opinion"). In addition, it is the "conflict of *decisions*, not conflict of *opinions* or *reasons* that supplies jurisdiction for review by certiorari." Jenkins, 385 So. 2d at 1359.

In Ansin v. Thurston, 101 So. 2d 808, 810 (Fla. 1958), this Court explained:

It was never intended that the district courts of appeal should be intermediate courts. The revision and modernization of the Florida judicial system at the appellate level was prompted by the great volume of cases reaching the Supreme Court and the consequent delay in the administration of justice. The new article embodies throughout its terms the idea of a Supreme Court which functions as a supervisory body in the judicial system for the State, exercising appellate power in certain specified areas essential to the settlement of issues of public importance and the preservation of uniformity of principle and practice, with review by the district courts in most instances being final and absolute.

Consistent with the above, and grounded on the dual propositions that district courts should be courts of final review and that this Court should not be overburdened with review of cases which can be definitively resolved in the district courts, this Court set out a procedure in Jollie under which district courts could (1) "dispose conveniently of multiple cases involving a single legal issue without disparately affecting the various litigants," using a PCA citation, Jollie, 405 So.2d at 420, while simultaneously (2) withholding the mandates and

retaining jurisdiction of the subsequent multiple cases involving the same legal issue as the lead case under review in this Court. Here, the district court cited to three cases from different district courts. It cannot be said, without going behind the decision into the record on appeal, a forbidden practice when examining discretionary conflict jurisdiction, that all these cases and the case at hand present a single legal issue¹. Nor can it be said that there is any direct and express conflict between the decision below and decisions of this Court or of any other district court.

Petitioner's remedy, if any, is in the district court. Assuming **arguendo** as claimed by petitioner that the district court decided this case solely on the basis of the same legal issue as that presented in Scott, petitioner should have moved the district court for rehearing and clarification and urged the district court to follow the Jollie procedure by withholding its mandate pending review of Scott in this Court. If the district court agreed with petitioner that the Scott outcome would be controlling here, it would presumably have withheld its mandate and retained jurisdiction, pursuant to Jollie, as it has done in the past. See, for example, Johnson v. State, case no. 95,781, where Johnson, who is also represented by the same law firm as

¹Undersigned counsel, as an officer of the court familiar with the record on appeal in the case at hand, acknowledges that the case here does seem to present the same issue as that under review in Scott but also recognizes that the parties may not stipulate jurisdiction. Polk County v. Sofka, 702 So.2d 1243 (Fla. 1997)

petitioner here, also erroneously sought review in this Court although the district court had not, pursuant to motion of the state and Jollie, issued a final decision or surrendered jurisdiction. (The state has moved to dismiss review of Johnson in this Court because the district court decision is not final and jurisdiction still resides in the district court.)

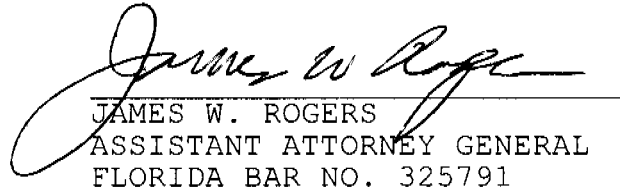
The district court mandate issued in the instant case, without objection, in June and no motion to withdraw has been filed in either the district court or this Court. Accordingly, there is no good reason why this Court should grant discretionary jurisdiction over a final decision of a district court for which petitioner did not exhaust remedies in the district court and for which he has not shown either direct and express conflict or a certified question.

CONCLUSION

This Court should not exercise discretionary jurisdiction.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL



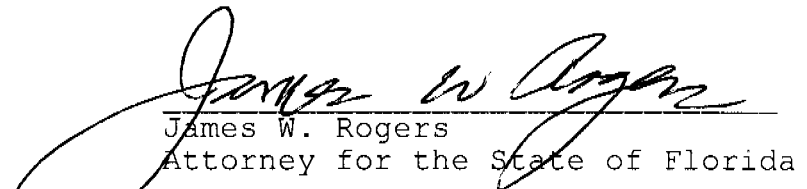
JAMES W. ROGERS
ASSISTANT ATTORNEY GENERAL
FLORIDA BAR NO. 325791

OFFICE OF THE ATTORNEY GENERAL
THE CAPITOL
TALLAHASSEE, FL 32399-1050
(850) 414 3300

COUNSEL FOR RESPONDENT
[AGO# L99-1-9531]

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing JURISDICTIONAL BRIEF OF RESPONDENT has been furnished by U.S. Mail to Kathleen Stover, Assistant Public Defender, Leon County Courthouse, Suite 401, 301 South Monroe Street, Tallahassee, Florida 32301, this 29th day of July 1999.



James W. Rogers
Attorney for the State of Florida

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Appendix

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Ag

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

SHAWN WASHINGTON,
Appellant,

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

v.

STATE OF FLORIDA,
Appellee.

CASE NO. 98-225

Docketed
6/11/99
Florida Attorney
General

Opinion filed June 9, 1999.

An appeal from the Circuit Court for Leon County.
J. Lewis Hall, Judge.

Nancy A. Daniels, Public Defender; Kathleen Stover, Assistant
Public Defender, Tallahassee, for Appellant.

Robert A. Butterworth, Attorney General; Trina Kramer, Assistant
Attorney General, Tallahassee, for Appellee.

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DISTRICT APPEALS
TALLAHASSEE

PER CURIAM.

AFFIRMED. See, e.g., Baskin v. State, No. 98-969 (Fla. 1st
DCA Apr. 27, 1999); Leaks v. State, 23 Fla. L. Weekly D1997 (Fla.
2d DCA Aug. 26, 1998); Scott v. State, 722 So. 2d 256 (Fla. 5th DCA
1998).

DAVIS and PADOVANO, JJ., CONCUR. BENTON, J., CONCURS IN RESULT.

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