ORIGINAL

IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. 96490

5 DCA CASE NO. 99-1629

STATE OF FLORIDA, et al.,

Petitioner,

vs.

JAMES ANDREW WILLIAMS,

Respondent.
_____/

ON DISCRETIONARY REVIEW FROM THE
DISTRICT COURT OF APPEAL, FIFTH DISTRICT,
AND THE FIFTH JUDICIAL CIRCUIT
IN AND FOR HERNANDO COUNTY, FLORIDA

RESPONDENT'S ANSWER BRIEF ON JURISDICTION

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TABLE OF CONTENTS

TABLE OF AUTHORITIES CITED

CASES CITED

OTHER AUTHORITY

STATEMENT OF THE CASE AND FACTS

On February 16, 1999, Chief Judge William T. Swigert of the Fifth Judicial Circuit, acting in and for Hernando County, Florida, did issue an Administrative Order, hereinafter entitled A99-6. The order stated that "any judge authorized to issue Capiases and Warrants in the Fifth Judicial Circuit shall, at the time of issuance, establish an amount of bond, which shall not be changed by any other judge except the one issuing the Capias or Warrant, or with the consent of same." Administrative Order A99-6, Fifth Judicial Circuit. (Appendix 1-2)

An arrest warrant for respondent James Andrew Williams was issued on May 27, 1999, by Hernando County Circuit Court Judge Jack Springstead. The warrant authorized the arrest of Respondent for the crime of one count of Aggravated Battery, a second degree felony. The warrant, signed by Judge Springstead, set bond in the amount of $5,500 and did not authorize modification by the first appearance judge.

Petitioner was arrested on the warrant signed by Judge Springstead on June 7, 1999. Petitioner appeared before Hernando County Court Judge Peyton Hyslop, acting in his capacity of committing magistrate, at a First Appearance Hearing the following morning.

At that hearing, following the statutory inquiry, the Honorable Peyton Hyslop found, as a matter of fact, that a reasonable condition of release would be a bond set in the amount of no greater than $1,500 for the charge lodged against respondent. His finding was based upon Florida Rules of Criminal Procedure 3.131(b)(3).

Pursuant to the order issued by the Honorable Judge William Swigert prohibiting the modification of bonds at First Appearance in the Fifth Judicial Circuit, the Honorable Peyton Hyslop declined to modify the bond.

On June 15, 1999, Respondent Williams filed a Petition For Certiorari in the District Court of Appeal, Fifth District.

Williams asserted that his right to a meaningful First Appearance as guaranteed to every arrested person by Article I Section XIV of the Florida Constitution and the Florida Rules of Criminal Procedure was violated. Williams further asserted that A99-6 was not an Administrative Order as it "did not establish procedures for the uniform operation of the Circuit." (See Valdez v. The Chief Judge of the Eleventh Judicial Circuit of Florida, 640 So. 2d 1164 (Fla. 3rd DCA 1994). Rather, petitioner contended, A99-6 modified both the Florida Statutes and the Florida Rules of Criminal Procedure. Thus, the order was invalid and should be quashed.

The Fifth District Court of Appeals found that "a defendant is entitled to an independent bail determination in front of the first appearance judge after a consideration of all relevant factors."

Norris v. State, 24 Fla. L. Weekly, D1866a (Fla. 5th DCA August 6, 1999). Accord, Williams v. State (Fla. 5th DCA). "Binding the first appearance judge by the initial endorsement of bail amount on the warrant deprives the defendant of a meaningful bail determination at first appearance." Norris at 4.

The Fifth District Court of Appeals granted the writ of certiorari in Norris and quashed the order. Id at 5., Williams at 1.

The Office of the Attorney General, Robert A. Butterworth, filed a Notice to Invoke Discretionary Jurisdiction on August 20, 1999, in Norris stating that "the decision (in Norris) expressly and directly conflicts with a decision of another district court of appeal or of the Supreme Court on the same question of law." Notice To Invoke Discretionary Jurisdiction, August 20, 1999. (Appendix 3-4). Like notice in Williams was filed.

The Attorney General further filed a Motion To Stay Mandate in Norris on August 20, 1999. The Fifth District Court of Appeals denied the Motion to Stay.

CERTIFICATE OF FONT

The undersigned attorney hereby certifies that this brief is submitted in Courier New Font, 12 point, a font that is not proportionally spaced.

SUMMARY OF THE ARGUMENT

Discretionary jurisdiction in the Florida Supreme Court lies when a decision rendered by a Florida District Court of Appeals "expressly and directly conflict(s) with a decision of another district court of appeal or of the supreme court on the same question of law." Fl. R. Ap. Proc. 9.030 (a)(2)(A)(iv). The conflict can be neither inherent nor implied. Rather, it must be direct and express.

In Norris and Williams (hereinafter referred to as Norris), the Fifth District Court of Appeals held that independent review by a first appearance judge of a bond set in a warrant issued must be conducted or the defendant is deprived of a meaningful first appearance. There is no appellate case in express or direct conflict with this case. The McCoy Court in the Third District Court of Appeals specifically held that when no box is checked permitting or denying modification of a bond set by the issuing judge the first appearance judge must conduct a bond inquiry.

Any implication that Norris conflicts with McCoy is insufficient to vest jurisdiction in this Honorable Court. Furthermore, dicta in Norris that the Court disagrees with the opinion in McCoy only inasmuch as it conflicts with Norris, does not create an express or direct conflict. At best, conflict may be

implied which is insufficient to form a basis for conflict jurisdiction.

ARGUMENT

THERE IS NO EXPRESS AND DIRECT CONFLICT BETWEEN THE FIFTH DISTRICT'S DECISION IN NORRIS AND WILLIAMS AND THE THIRD DISTRICT'S DECISION IN McCOY.

When two district courts of appeals render decisions that do not expressly and directly conflict with each other no conflict jurisdiction can lie. To invoke the Supreme Court's discretionary jurisdiction the minimum standard is that decisions rendered in two different courts of appeal must "expressly and directly conflict" with each other "on the same question of law." Fla. R. App. Proc. 9.030(a)(2)(A)(iv).

While both Norris and McCoy both address the issue of bond determinations at first appearances, the issues they raise are neither the same nor do they expressly and directly conflict with each other. Norris v. State, 24 Fla. L. Weekly D1866a (Fla. 5th DCA August 6, 1999); McCoy v. State, 702 So. 2d 252 (Fla. 3d DCA 1077).

Norris held that a citizen arrested on a warrant is entitled to a first appearance bail inquiry to provide him with a "meaningful bail determination." Norris at 4. McCoy held that a warrant issued with no permission to authorize or deny authority to change the bond required that the first appearance judge has a *duty* to conduct a bond determination. McCoy at 253. (emphasis supplied).

Norris expressly mandates that ***all citizens arrested on warrants with predetermined bond amounts are absolutely entitled to a meaningful bond determination conducted by a first appearance magistrate***. Norris at 4. Certainly, the Norris court's holding may be viewed as far more sweeping that that in McCoy. Nevertheless, it does not expressly and directly conflict with that court and that is the minimum standard required for review by this Honorable Court.

The only facts that this Honorable Court may consider in a request for jurisdiction must be contained within the four corners of the majority opinion. Reaves v. State, 485 So. 2d 829 (Fla. 1086). Those facts ***can not be contained in a minority opinion***. Id. Thus, this Court in a conflict question cannot consider Justice J. Goshorn's dissenting opinion in Norris. Norris at 6. Furthermore, when the conflict at issue is either inherent or implied, jurisdiction in a conflict case is properly denied. Dept. of HRS v. National Adotion Addoption Counseling Services, Inc., 498 So. 2d 888 (Fla. 1986).

The State misstates the exact holding in Norris by failing to include the express language of the Court. The State argues that the Court's language found that the holding in Norris found that McCoy "conflicts with this decision." State v. Norris, Petitioner's Brief on Jurisdiction at 2. (Quotes supplied in Petitioner's Brief). In fact, the exact language used by the Norris court was "***Inasmuch*** as it conflicts with this decision, we disagree with the opinion in McCoy v. State, 702 So. 2d 252 (Fla. 3d DCA 1997), where the court ***implies*** that a first appearance judge only has the authority and duty to independently consider the appropriate conditions of release when the judge issuing the gwarrant does not specifically preclude the first appearance judge from doing so." Norris at 5. (Emphasis supplied).

The Norris court clearly precludes conflict jurisdiction from its express holding by the use of the words "inasmuch" and "implies." Id. Furthermore, it should be noted that the Fifth District Court of Appeals ***DID NOT*** certify the question to the Supreme Court as in direct conflict with o9ther district courts of appeal. Thus, it should be assumed that the Fifth District Court of Appeals ***DID NOT FIND THE NORRIS DECISION TO BE IN CONFLICT WITH MCCOY.*** See Fl. R. App. Proc. 9.030(a)(2)(A)(vi).

When the holdings in two specific appellate decisions do not directly address the same question of law there is no conflict. The Court can only look to the expressed holding and not examine dicta even if it implies there may be a conflict. In McCoy, the dicta that

seems to suggest or imply that a first appearance judge has the authority and duty to avoid considering appropriate conditions of bond release when precluded by the issuing judge is merely dicta and nothing more. Consequently, there is no precedential value in the McCoy dicta and no conflict with Norris.

CONCLUSION

The decision in Norris and, likewise, Williams, does not expressly and directly conflict with that of the McCoy Court. Consequently, this Honorable Court has no jurisdiction to review the Norris and Williams decisions.

RESPECTFULLY SUBMITTED

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished by U/S. Mail, Federal Express, hand delivery or Fax to Belle Schumann, Attorney General's Office, 444 Seabreeze Blvd., 5th Floor, Daytona Beach, Fl., 32118; the Office of the State Attorney and the Honorable Peyton Hyslop, Hernando County Judicial Center; the Honorable William T. Swigert, 110 N.W. 1st Ave., Ocala, Fl, 34601; and Greenfelder, Mander, Hanson, Murphy and Dwyer, 14217 Third Street, Dade City, FL 33523, October 8, 1999.

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