

IN THE SUPREME COURT OF FLORIDA

CASE NO. 96,994

DCA CASE NO. 98-2140

FILED
DEBBIE CAUSSEAU
JAN 10 2000
CLERK, SUPREME COURT
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JAMES TARPLEY,

Petitioner,

-vs-

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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TABLE OF CONTENTS

PAGES

TABLE OF CITATIONS ii

INTRODUCTION 1

CERTIFICATE OF TYPE AND STYLE 1

STATEMENT OF THE CASE AND FACTS 1

QUESTION PRESENTED 4

SUMMARY OF THE ARGUMENT 5

ARGUMENT 6

**THE DECISION OF THE DISTRICT COURT OF APPEAL,
THIRD DISTRICT, IN THE INSTANT CASE EXPRESSLY
AND DIRECTLY CONFLICTS WITH THE DECISION OF
THE SECOND DISTRICT COURT OF APPEAL IN
THOMPSON V. STATE, 708 So.2d 315 (Fla. 2d DCA
1998)**

CONCLUSION 10

CERTIFICATE OF SERVICE 10

INTRODUCTION

The Petitioner, James Tarpley, was the Defendant in the trial court and the Appellant in the Third District Court of Appeal. THE STATE OF FLORIDA, was the prosecution in the trial court and Appellee in the Third District Court of Appeal. The parties shall be referred to as Petitioner and Respondent in this brief. The symbol "App." followed by a colon and page number refers to the appendix to this brief, containing a conformed copy of the slip opinion of the Third District Court of Appeals in the instant cause.

CERTIFICATE OF TYPE SIZE AND STYLE

Counsel for the Respondent, the State of Florida, hereby certifies that 12 point Courier New is used in this brief.

STATEMENT OF THE CASE AND FACTS

The State is in substantial agreement with the Defendant's version of the case and facts in so far as they are accurate and non-argumentative. Any additional facts which the State seeks to bring to the attention of the Court are contained in the argument portion of the brief.

QUESTION PRESENTED

WHETHER THE DECISION OF THE DISTRICT COURT OF APPEAL, THIRD DISTRICT, IN THE INSTANT CASE EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF THE SECOND DISTRICT COURT OF APPEAL IN *THOMPSON V. STATE*, 708 So.2d 315 (Fla. 2d DCA 1998)

SUMMARY OF THE ARGUMENT

Because the Petitioner was convicted and sentenced for an offense committed on September 25, 1996, after the effective date of the 1995 sentencing guidelines and prior to October 1, 1996, the State would agree the Defendant was sentenced within the window period to challenge Chapter 95-182 Laws of Florida. As such, as stated in the State's Response on Direct Appeal, the State is in agreement that a conflict should have been certified with regard to the Second District Court of Appeals decision in Thompson v. State, 708 So.2d 315 (Fla. 2d DCA) review granted, 717 So.2d 538 (Fla. 1998).

ARGUMENT

THE DECISION OF THE DISTRICT COURT OF APPEAL,
THIRD DISTRICT, IN THE INSTANT CASE EXPRESSLY
AND DIRECTLY CONFLICTS WITH THE DECISION OF
THE SECOND DISTRICT COURT OF APPEAL IN
THOMPSON V. STATE, 708 So.2d 315 (Fla. 2d DCA
1998).

Discretionary jurisdiction of this Honorable Court may be exercised to review, among other matters, decisions of district courts of appeal which expressly and directly conflict with a decision of this Court or of another district court of appeal on the same question of law. Article V, Section 3(b), Fla. Const.; Fla. R. App. P. 9.030(a)(2)(A)(iv). Decisions are considered to be in express and direct conflict when the conflict appears within the four corners of the majority decision. Reaves v. State, 485 So.2d 829, 830 (Fla. 1986). Neither the record itself nor the dissenting opinion may be used to establish jurisdiction. Id.

Because the Third District's opinion in the instant case, Tarpley v. State, No. 98-2140 (Fla. 3d DCA October 13, 1999) (App. A), conflicts with the decision of the Second District in Thompson, and this Court's subsequent decision in State v. Thompson, No. 92,831 (Fla. December 22, 1999), Respondent agrees that this Court should accept jurisdiction as Petitioner presents a legitimate basis for the invocation of this Court's discretionary jurisdiction.

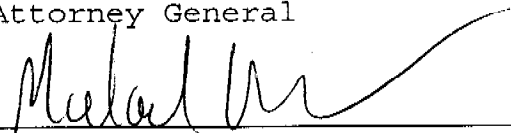
The State further agrees that the instant case should be remanded to the trial court for resentencing in accordance with the valid laws in effect on September 25, 1996, the date on which the Petitioner committed his offense. State v. Thompson, 1999 WL 1244518 (Fla. December 22, 1999).

CONCLUSION


WHEREFORE, the State is in agreement that the Petition for Discretionary Review should be granted as there is express and direct conflict between the decisions of the Third District Court of Appeals the Second District Court of Appeals and this Court.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing BRIEF OF RESPONDENT was mailed to Robert Godfrey, Assistant Public Defender, 1320 N.W. 14th Street, Miami, Florida 33125 on this 7th day of January, 2000.



M. REBECCA SPRINGER
Assistant Attorney General