

IN THE SUPREME COURT OF FLORIDA

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CASE NO. 1999-125

CLERK, SUPREME COURT
BY DJ

4DCA Case no. 98-3528

MICHAEL CONSIGLIO,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

RESPONDENT'S BRIEF ON JURISDICTION

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PRELIMINARY STATEMENT

Petitioner was the Appellant in the Fourth District Court of Appeal and the defendant in the trial court. Respondent was the Appellee and the prosecution, respectively, in those courts. In this brief, the parties will be referred to as they appear before this Honorable Court.

CERTIFICATE OF FONT SIZE

In accordance with the applicable Florida Supreme Court Administrative Order, counsel certifies that this brief had been prepared with 12 point Courier New type, a font that is not spaced proportionately.

STATEMENT OF THE CASE AND FACTS

Respondent accepts Petitioner's statement of the case and facts.

SUMMARY OF THE ARGUMENT

The decision of the Fourth District Court of Appeal in this case does not directly and expressly conflict with a decision of another district court of appeal. The cases are factually distinguishable.

ARGUMENT

ISSUE I

THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL
DOES NOT DIRECTLY AND EXPRESSLY CONFLICT WITH THE
DECISION OF ANOTHER DISTRICT COURT.

For two court decisions to be in express and direct conflict for the purpose of invoking this Court's discretionary jurisdiction under Florida Rule of Appellate Procedure 9.030(a)(2)(A)(iv), the decisions should speak to the same point of law, *in factual contexts of sufficient similarity* to permit the inference that the result in each case would have been different had the deciding court employed the reasoning of the other court. See generally Mancini v. State, 312 So.2d 732 (Fla. 1975) (emphasis supplied).

In Jenkins v. State, 385 So.2d 1356, 1359 (Fla. 1980), this Court defined the limited parameters of its conflict review as follows:

This Court may only review a decision of a district court of appeal that expressly and directly conflicts with a decision of another district court of appeal or the Supreme Court on the same question of law. The dictionary definition of the terms 'express' include: 'to represent in words'; to give expression to.' 'Expressly' is defined: 'in an express manner.'
Webster's Third New International Dictionary (1961 ed. unabr.)

See generally Ansin v. Thurston, 101 So.2d 808 (Fla. 1958);
Withlacoochee River Electric Co-op v. Tampa Electric Company,

158 So.2d 136 (Fla. 1963), cert. denied, 377 U.S. 952, 84 S.Ct. 1628, 12 L.Ed.2d 497 (1964); and England and Williams, Florida Appellate Reform One Year Later, 9 F.S.U. L. Rev. 221 (1981). See also Mystan Marine, Inc. v. Harrington, 339 So.2d 200, 210 (Fla. 1976) (This Court's discretionary jurisdiction is directed to a concern with decisions as precedents, not adjudications of the rights of particular litigants).

The decisions in this case and Ward v. State, 730 So. 2d 728 (Fla. 1st DCA 1999) are fact specific. In Ward, the State cited Brown v. State, 430 So. 2d 446 (Fla. 1995), arguing that the two offenses were separated geographically or temporally. 730 So. 2d at 729. The First District found that under the facts of that case there was no temporal or geographic separation. 730 So. 2d at 729-30. The facts of Ward indicate that the victim's car and valuables were taken from the same place at the same time. Additionally, unlike the present case, the victim in Ward was inside the vehicle at the time of the incident giving rise to the charges. 730 So. 2d at 729.

In Consiglio, the Fourth District also recognized the principles discussed in Brown. Slip op. at p. 1. However, the Court found that under the facts of this case, there was a temporal break. Although the opinion indicates the break was short, it does not indicate the exact length of the

break. The Fourth District stated "Subsequently, the appellant drove off in the victim's car, completing the offense of carjacking." Slip op. p. 1 (emphasis supplied). These facts distinguish this case from Ward. Additionally, unlike Ward, the robbery did not occur inside the car. It occurred an unspecified distance from the car. Slip op. p. 1. Accordingly, it is not possible to find express and direct conflict between the decisions.

TABLE OF AUTHORITIES

CASES

Ansin v. Thurston, 101 So. 2d 808 (Fla. 1958) 4

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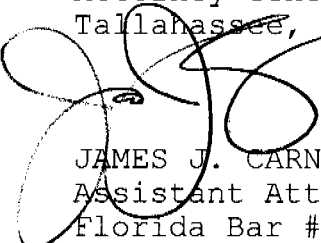
Florida Rule of Appellate Procedure 9.030(a)(2)(A)(iv) 4

CONCLUSION

Based on the preceding argument and authorities, this Court should not accept jurisdiction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true copy of this document has been furnished by courier to Paul E. Petillo, Criminal Justice Building\Sixth Floor, 421 Third Street, West Palm Beach, FL 33401, this ____ day of January 2000.



Of Counsel