

IN THE SUPREME COURT OF THE STATE OF FLORIDA

ALAN OSTERHOUDT, JR.,

Petitioner,

v.

CASE NO. SC16-303  
5TH DCA NO. 5D13-4277

STATE OF FLORIDA,

Respondent.

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ON DISCRETIONARY REVIEW FROM THE  
FIFTH DISTRICT COURT OF APPEAL

JURISDICTIONAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE FACTS

The only facts relevant to this Court in determining whether to accept jurisdiction are those contained the decision of the Fifth District Court of Appeal, Osterhoudt v. State, 182 So. 3d 16, 17 (Fla. 5th DCA 2015), reh'g denied (Jan. 14, 2016).<sup>1</sup>

The Fifth DCA's majority opinion set out the following relevant facts:

Alan Osterhoudt (the defendant) appeals his judgment and sentence, which were entered by the trial court after a jury found him guilty of committing the crime of manslaughter. The defendant's contention that the trial court erred by denying his motion for mistrial is without merit. However, we write to address the defendant's contention that the trial court erred in imposing certain fees, costs, and fines.

Post-sentencing, the defendant filed a motion for sentencing relief pursuant to rule 3.800 of the Florida Rules of Criminal Procedure. Among other things, the motion alleged error in the imposition of certain fees, costs, and fines. The motion was denied.

Id. at 17.

Petitioner filed a notice to invoke the discretionary jurisdiction of this Court. Respondent's jurisdictional brief follows.

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<sup>1</sup> Respondent asks this Court to disregard Petitioner's references in Petitioner's jurisdictional brief to those facts not contained within the Fifth District Court of Appeal's ("Fifth DCA") opinion. See Reaves v. State, 485 So. 2d 829, 830 n.3 (Fla. 1986) (explaining that conflict jurisdiction cannot be based on a review of the record).

SUMMARY OF THE ARGUMENT

This Court should decline to accept jurisdiction. The decision under review does not expressly and directly conflict with any other decision of a district court.

## ARGUMENT

THE LOWER COURT'S OPINION DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH A DECISION OF ANOTHER DISTRICT COURT.

Petitioner seeks discretionary review with this Honorable Court under Article V, Section 3(b)(3) of the Florida Constitution. Article V, Section 3(b)(3) provides that the Florida Supreme Court may review a district court of appeal decision only if it "expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law." See also Fla. R. App. P. 9.030(a)(2)(A)(iv). "Conflict between decisions must be express and direct, i.e., it must appear within the four corners of the majority decision." Reaves, 485 So. 2d at 830 n.3. In addition, an inherent or so-called "implied" conflict may not serve as a basis for this Court's jurisdiction. DHRS v. Nat'l Adoption Counseling Serv., Inc., 498 So. 2d 888, 889 (Fla. 1986). Respondent contends that no express and direct conflict exists between the instant opinion and a decision of another district court.

The instant case does not expressly and directly conflict with those on which Petitioner relies to demonstrate conflict. In Osterhoudt, Petitioner appealed the trial court's denial of his motion filed pursuant to Florida Rule of Criminal Procedure 3.800, which challenged the imposition of certain fees, discretionary fines, and costs at sentencing. Osterhoudt, 182 So. 3d at 17. The

Fifth DCA affirmed the denial of Petitioner's motion. Id. The district court concluded that Petitioner did not properly preserve his claims for appellate review by filing the motion because he raised only procedural, and not substantive, claims in the rule 3.800 motion. Id.

In Williams v. State, 41 Fla. L. Weekly D533 (Fla. 2d DCA Mar. 2, 2016), the appellant filed a motion to correct sentencing error, arguing that the appellate court should strike a discretionary statutory fine and a surcharge because the trial court failed to specify them in its oral pronouncement. Id. The Second District Court of Appeals ("Second DCA") found that Williams properly preserved his challenge to the imposition of the fine and surcharge by filing the motion. Id. As he had argued in the motion, Williams argued on appeal "that the discretionary statutory fine and surcharge should be struck because the circuit court neglected to specify them in its oral pronouncement." Id.

The Fifth DCA's opinion does not elaborate on the specific arguments Petitioner raised on appeal. Instead, the opinion finds that Petitioner's arguments were not preserved because he attempted to raise claims that were not argued in his rule 3.800 motion. In Williams, it was clear that, based on the appellate court's recitation of the facts, Williams raised the same arguments in his motion and on appeal. Accepting jurisdiction based on these two cases would require this Court to imply conflict that does not

exist on the face of the opinions.<sup>2</sup> In addition, in this respect, it is not clear that the cases are factually similar because it is unknown if the claims raised by Osterhoudt were comparable to those raised by Williams. Cf. Crossley v. State, 596 So. 2d 447, 449 (Fla. 1992) (finding conflict existed where the court reached the opposite result on controlling facts which were virtually identical).

Further, the legal issues addressed by the appellate courts in Osterhoudt and Williams were different. In Osterhoudt, the Fifth DCA did not address the merits of the appellant's claims but rather, focused on whether those claims were waived. In Williams, the Second DCA addressed the merits of the appellant's claim; that is, whether the trial court erred in denying the motion to correct sentencing error. Conflict jurisdiction is proper where the appellate courts reach "different conclusions on the same question of law." Miles v. Weingrad, 164 So. 3d 1208, 1211 (Fla. 2015). See also Linn v. Fossum, 946 So. 2d 1032, 1035 (Fla. 2006) (finding conflict existed where the same argument was raised on appeal in

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<sup>2</sup> Contrary to Petitioner's assertions, courts have distinguished between procedural and substantive claims. In Ladson v. State, 955 So. 2d 612 (Fla. 2d DCA 2007), the court affirmed the denial of a rule 3.800(b) motion because the appellant's "objection was procedural only and he raised no substantive basis to strike the condition." Id. at 613. See also West. v. State, 82 So. 3d 987, 990 (Fla. 1st DCA 2011) (finding the claim that the trial court denied the appellant a statutorily mandated hearing was "a sufficient substantive basis").

both cases). This is not such a case.

The legal question addressed in Reyes v. State, 655 So. 2d 111 (Fla. 2d DCA 1995) was likewise dissimilar. In Reyes, the Second DCA granted rehearing en banc to clarify the implication of its prior opinion, which implicitly approved the oral lump sum imposition of costs. Id. at 113. In so doing, the district court reiterated that trial courts must “orally announce discretionary costs at sentencing hearings” and those costs must be “separately identified in the cost order.” Id. at 116. In this case, the Fifth DCA never reached this question in affirming the fees, costs, and fines challenged by Petitioner.

The Fifth DCA’s opinion, on its face, does not conflict with Odom v. State, 41 Fla. L. Weekly D589 (Fla. 1st DCA Mar. 8, 2016). In Odom, the court reversed the trial court’s denial of a rule 3.800(b)(2) motion, which challenged the imposition of a discretionary fine, and surcharge, which was not orally pronounced at sentencing. Id. Although the procedural posture of Osterhoudt and Odom were the same in the trial court (both filed rule 3.800 motions to contest fees, costs, and fines), the appellate courts addressed different legal issues and consequently reached different conclusions. The Fifth DCA focused on preservation, while the First DCA focused on the merits of the appellant’s claims.

The instant case—and those on which Petitioner relies—do not expressly and directly conflict. There is no basis for conflict

jurisdiction.

CONCLUSION

Based on the arguments and authorities presented herein, the State respectfully requests this Honorable Court decline to accept jurisdiction in this case.

DESIGNATION OF E-MAIL ADDRESSES

I HEREBY DESIGNATE the following e-mail addresses for purposes of service of all documents in this proceeding, pursuant to Rule 2.516: crimappdab@myfloridalegal.com (primary) and Marjorie.Vincent-Tripp@myfloridalegal.com (secondary).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing has been furnished by e-mail to counsel for Petitioner, Michael Ufferman (2022-1 Raymond Diehl Rd, Tallahassee, FL 32308) at ufferman@uffermanlaw.com on April 18, 2016.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 12-point Courier New, in compliance with Fla. R. App. P. 9.210(a)(2).

Respectfully submitted,

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