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IN THE SUPREME COURT OF FLORIDA

RONALD J. RICHARDS,

Petitioner,

v. CASE NO. SC19-24

STATE OF FLORIDA,

Respondent.
_____/

ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

RESPONDENT'S ANSWER BRIEF ON THE MERITS

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STATEMENT OF FACTS

Respondent accepts Petitioner's statement of the case and facts, and submits the following additions to Petitioner's Statement of Facts:

At the plea and sentencing hearing, the trial court asked if there was a police agency fee "in this." (R 18). The State answered in the affirmative. (R 18). The trial court asked if the judge who he was sitting in for normally imposed a $150.00 police agency fee. (R 18-19). The State again answered in the affirmative. (R 19).

The Fifth District Court of Appeal's (Fifth DCA) opinion in Richards v. State, 258 So. 3d 576 (Fla. 5th DCA 2018), in its entirety was as follows:

> PER CURIAM.
>
> Ronald Richards appeals his violation of probation sentence arguing that the trial court erred in imposing costs of investigation in the absence of a request from the State or any evidence from the investigating agency. We agree. See Taylor v. State, 242 So.3d 1203-1204 (Fla. 5th DCA 2018); Foulkes v. State, 221 So.3d 789, 790 (Fla. 5th DCA 2017). We therefore remand for the trial court to strike these costs from the judgment, noting that the State should be given the opportunity to request the imposition of investigative costs. See McCarthy v. State, 893 So.2d 689, 690 (Fla. 5th DCA 2005).
>
> REVERSED and REMANDED.

TORPY, LAMBERT, and HARRIS, JJ., concur.

SUMMARY OF ARGUMENT

The lower court's opinion does not expressly and directly conflict with any other decision. Petitioner has failed to demonstrate that this Court has jurisdiction, and this Court should dismiss this case because jurisdiction was improvidently granted.

Further, the district court properly remanded the case to the trial court to strike the costs from the judgment, and to give the State an opportunity to request the imposition of investigative costs.

ARGUMENT

THE DISTRICT COURT PROPERLY EXERCISED ITS ROLE IN REVIEWING THE TRIAL COURT'S ORDER, AND ITS DECISION SHOULD BE APPROVED.

The district court properly remanded the case to the trial court to strike the costs from the judgment, and to give the State an opportunity to request the imposition of investigative costs, applying long-standing legal principles to the facts before it. Richards v. State, 258 So. 3d 576 (Fla. 5th DCA 2018). Petitioner now seeks an additional review of the issue.

The record fully supports the district court's decision, and its opinion should be approved by this Court.

Jurisdiction

Before addressing the costs issue, this Court should reconsider its order accepting jurisdiction of this case. The district court's decision treads no new legal ground, but simply applies long standing precedent to the facts of this case. Such a routine decision should not be subject to a second tier of review in this Court.

The Florida Constitution has set up a system of judicial review wherein the district courts of appeal have been designed to be the final appellate courts in the state of Florida, except under certain limited circumstances specifically delineated in Article

V, section 3 of the Florida Constitution. Accordingly, this Court has expressly recognized that it "has no jurisdiction to simply and routinely review the district court decisions", nor can it "simply assume jurisdiction in a case to correct what we perceive as error, even if the issue appears to be important." State v. Barnum, 921 So. 2d 513, 523 (Fla. 2005).

The negative ramifications of far-reaching jurisdiction in this Court was recognized long ago, and the 1980 changes to this Court's jurisdiction served to solidify the limited nature of this Court's review:

> 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.
>
> **To fail to recognize that these are courts primarily of final appellate jurisdiction and to allow such courts to become intermediate courts of appeal would result in a condition far more detrimental to the general welfare and the speedy and efficient administration of**

> **justice than that which the system was designed to remedy.**

Jenkins v. State, 385 So. 2d 1356, 1357-58 (Fla. 1980) (quoting Ansin v. Thurston, 101 So. 2d 808, 810 (Fla.1958) (emphasis added)).

As a practical matter, this Court lacks the resources to review every routine decision by the district courts. As a legal matter, this Court lacks the constitutional authority to do so.

Accordingly, whether the district court's decision on costs was wrong or right is not the proper question in determining jurisdiction here. Rather, the only question is whether the district court's decision expressly and directly conflicts with another decision of this Court or another district court "within the four corners of the majority decision." Reaves v. State, 485 So. 2d 829, 830 (Fla. 1986).

Petitioner has failed to demonstrate that such a conflict exists here.

The Fifth District Court of Appeal's (Fifth District) opinion in Richards v. State, 258 So. 2d 576 (Fla. 5th DCA 2018), in its entirety was as follows:

> PER CURIAM.
>
> Ronald Richards appeals his violation of probation sentence arguing that the trial court erred in imposing costs of investigation

> in the absence of a request from the State or any evidence from the investigating agency. We agree. See Taylor v. State, 242 So.3d 1203–1204 (Fla. 5th DCA 2018); Foulkes v. State, 221 So.3d 789, 790 (Fla. 5th DCA 2017). We therefore remand for the trial court to strike these costs from the judgment, noting that the State should be given the opportunity to request the imposition of investigative costs. See McCarthy v. State, 893 So.2d 689, 690 (Fla. 5th DCA 2005).
>
> REVERSED and REMANDED.
>
> TORPY, LAMBERT, and HARRIS, JJ., concur.

Petitioner argued in his jurisdictional brief that the Fifth District's opinion in the instant case is in direct and express conflict with the First and Fourth District Courts of Appeal. Specifically, he cites the cases of Thomas v. State, 236 So. 3d 1159 (Fla. 1st DCA 2018), and Chambers v. State, 217 So. 3d 210 (Fla. 4th DCA 2017).

Thomas and Chambers were not even cited in the opinion from the Fifth District. Both those cases do strike costs because they were not requested by the State. However, if costs were just imposed with no objection by the trial court, there would have been no reason to indicate they were requested. Additionally, such imposition may or may not have been done without objection from the defense. Further, the opinion is so limited there is no indication what was argued to the Fifth District by either party.

While the costs were stricken in Thomas and Chambers, whether any re-imposition was contested cannot be ascertained from the opinions.

Therefore, the district court's opinion is not in conflict with the case law of this Court or the other district courts, and in fact, the Fifth District accepted one reason found by the trial court based upon the applicable standard of review. Clearly, Petitioner has failed to establish express and direct conflict.

This Court should find that jurisdiction was improvidently granted, and review should be dismissed.

COSTS

The district court properly remanded the case to the trial court and gave the State an opportunity to request the imposition of investigative costs.

"The interpretation of a statute is a purely legal matter and therefore subject to the de novo standard of review." Jones v. State, 966 So. 2d 319, 325-326 (Fla. 2007) (quoting Kephart v. Hadi, 932 So.2d 1086 (Fla. 2006)).

"In all criminal . . . cases, convicted persons are liable for payment of the costs of prosecution, including investigative costs incurred by law enforcement agencies . . . ." § 938.27(1), Fla. Stat. However, a trial court cannot impose investigative

costs absent an express request by the State, Foulkes v. State, 221 So. 3d 789, 790 (Fla. 5th DCA 2017), and "evidence of the amount of the costs." Jackson v. State, 137 So. 3d 470, 472 (Fla. 4th DCA 2014), aff'd, 191 So. 3d 423 (Fla. 2016). See also § 938.27(4), Fla. Stat. (recognizing that the state attorney has the burden of demonstrating the amount of costs incurred).

As this Court explained in McNeil v. State, 215 So. 3d 55, 58 (Fla. 2017),

> When the question of law involves the provisions of a statute, "we must first and foremost endeavor to give effect to the legislative intent underlying that statute ...." To determine legislative intent, this Court looks first to the plain language of the statute. When the plain language of the statute is unambiguous and conveys a clear meaning, the statute must be given its obvious meaning.

McNeil at 58 (internal citations omitted).

The cost at issue here was imposed pursuant to section 938.27, Florida Statutes, which provides as follows:

> (1) In all criminal and violation-of-probation or community-control cases, convicted persons are liable for payment of the costs of prosecution, including investigative costs incurred by law enforcement agencies, by fire departments for arson investigations, and by investigations of the Department of Financial Services or the Office of Financial Regulation of the

> Financial Services Commission, *if requested by such agencies.* The court shall include these costs in every judgment rendered against the convicted person. For purposes of this section, "convicted" means a determination of guilt, or of violation of probation or community control, which is a result of a plea, trial, or violation proceeding, regardless of whether adjudication is withheld.

§ 938.27, Fla. Stat. (2017) (emphasis added).

As previously stated, the Fifth DCA in Richards remanded the matter for the trial court to strike the investigative costs from the judgment and allowed the State the opportunity to request the imposition of investigative costs.

The plain language of the statute fully comports with Richards v. State, 258 So. 3d 576 (Fla. 5th DCA 2018). Nothing in the statute precludes the district court from remanding the issue for further consideration by the trial court. Upon remand, the State would still be required to comply with the statute by requesting the cost of investigation. Absent a request, the trial court would not impose the cost.

Because the request would still have to be made before the trial court imposed the cost, the procedure ordered here fully complies with the statutory requirement that the costs be requested. Absent an affirmative waiver of investigative costs, the State should not be precluded from properly requesting that

the cost be imposed, with Petitioner afforded notice and an opportunity to be heard.

Petitioner explains, and Respondent agrees, that section 938.27, Florida Statutes, was amended in 2008 to remove the requirement that the investigative costs be "documented." § 938.27(1), Fla. Stat. (2008). Respondent disagrees that the Fifth District was somehow not aware of the change in the statute, and inadvertently applied long standing precedent that was no longer applicable.

As support for his proposition, Petitioner observes that the Second District has evolved its stance since the 2008 amendment. Petitioner argues that by comparing the holding of Love v. State, 992 So. 2d 823 (Fla. 2nd DCA 2008) with Mercado v. State, 43 Fla. L. Weekly D2340 (October 17, 2018), one should conclude that the Second DCA has recognized the amendment to the statute and evolved accordingly.

Respondent disagrees that the Second District has reversed itself on this issue because of the 2008 amendment to the section 938.27, Florida Statutes. The court in Mercado did not address the holding in Love. Nor did the Mercado court conclude that the holding in Love was no longer viable because of the 2008 amendment to section 938.27, Florida Statutes.

There is also no reason to conclude that the Fourth District has reversed itself on the issue because of the 2008 amendment. Although Chambers v. State, 217 So. 3d 210 (Fla. 4th DCA 2017) appears to reach a different result on the issue than Jackson v. State, 137 So. 3d 470 (Fla. 4th DCA 2014), the court in Chambers did not address the holding in Jackson, or hold that Jackson was no longer viable because of the 2008 amendment to section 938.27, Florida Statutes.

The Third District has correctly aligned itself with the Fifth District, holding that the trial court should allow the State an opportunity to prove investigative costs upon remand. State v. Diminguez, 27 So. 3d 782 (Fla. 3rd DCA 2010).

The district court properly remanded the case to the trial court to strike the costs from the judgment, and to give the State an opportunity to request the imposition of investigative costs, applying long-standing legal principles to the facts before it. Respondent respectfully requests this Honorable Court find that jurisdiction was improvidently granted or, in the alternative, approve the decision of the Fifth District Court of Appeal.

CONCLUSION

Based on the arguments and authorities presented herein, Respondent respectfully requests this Honorable Court find that jurisdiction was improvidently granted or, in the alternative, approve the decision of the Fifth District Court of Appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above Answer Brief On the Merits has been furnished by e-portal delivery to Matthew Funderburk, Assistant Public Defender and counsel for Petitioner, 444 Seabreeze Blvd., Ste. 210, Daytona Beach, FL 32118 at appellate.efile@pd7.org and funderburk.matthew@pd7.org, this 13th day of June, 2019.

CERTIFICATE OF COMPLIANCE

The undersigned counsel certifies that this brief was typed using 12 point Courier New, a font that is not proportionately spaced.

/s/ L. Charlene Matthews
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