

IN THE SUPREME COURT OF THE STATE OF FLORIDA

RONALD JAMES RICHARDS,

Petitioner,

v.

CASE NO. SC19-0024  
5th DCA No. 5D17-2704

STATE OF FLORIDA,

Respondent.

\_\_\_\_\_ /

ON DISCRETIONARY REVIEW FROM  
THE FIFTH DISTRICT COURT OF APPEAL

JURISDICTIONAL BRIEF OF RESPONDENT

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STATEMENT OF CASE AND FACTS

The only facts relevant to this Court in determining whether to accept jurisdiction are those contained within the opinion of the District Court.<sup>1</sup> 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.

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<sup>1</sup> Reaves v. State, 485 So. 2d 829, 830 (Fla. 1986).

SUMMARY OF THE ARGUMENT

This Court should decline to accept jurisdiction in the instant case. The Court is limited to the facts contained within the four corners of the decision in determining whether an express and direct conflict exists. On the face of the decision under review, there is no express and direct conflict with any decision of this Court or any district court.

ARGUMENT

THIS COURT SHOULD DECLINE TO  
EXERCISE ITS DISCRETIONARY  
JURISDICTION IN THIS CASE, AS THE  
FIFTH DISTRICT'S OPINION DOES NOT  
EXPRESSLY AND DIRECTLY CONFLICT  
WITH A DECISION OF THIS COURT OR  
ANOTHER DISTRICT COURT.

Petitioner seeks discretionary review with this Honorable Court under Article V, Section 3(b)(3) of the Florida Constitution. See also Fla. R. App. P. 9.030(a)(2)(A)(iv). 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." In Reaves v. State, 485 So. 2d 829, 830 (Fla. 1986), this Court explained: "[c]onflict between decisions must be express and direct, i.e., it must appear within the four corners of the majority decision. Neither a dissenting opinion nor the record itself can be used to establish jurisdiction." Reaves, 485 So. 2d at 830, n.3. Additionally, this Court has held that inherent or so-called "implied" conflict may not serve as a basis for this Court's jurisdiction. DHRS v. National Adoption Counseling Service, Inc., 498 So. 2d 888, 889 (Fla. 1986).

Petitioner submits 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).

The State would note that Thomas and Chambers were not even cited in the opinion from the Fifth District. Both those cases do strike costs given 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 opinion.

Therefore, the State would submit that 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.

CONCLUSION

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Jurisdictional Brief of Respondent has been delivered by electronic service on counsel for Petitioner, Matthew Funderburk, 444 Seabreeze Blvd., Ste. 210, Daytona Beach, FL 32118, at [appellate.efile@pd7.org](mailto:appellate.efile@pd7.org) and [funderburk.matthew@pd7.org](mailto:funderburk.matthew@pd7.org), this 8th day of February 2019.

DESIGNATION OF EMAIL

I HEREBY DESIGNATE the following email addresses for purposes of service of all documents, pursuant to Rule 2.516, in this proceeding: [crimappdab@myfloridalegal.com](mailto:crimappdab@myfloridalegal.com) (primary) and [wesley.heidt@myfloridalegal.com](mailto:wesley.heidt@myfloridalegal.com) (secondary).

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief was typed in 12-point Courier New as required by Rule 9.210(a)(2).

Respectfully submitted,

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/s/ Wesley Heidt

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