

IN THE SUPREME COURT OF FLORIDA

RONALD JAMES RICHARDS,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

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FSC Case No. SC19-24

Fifth DCA Case No. 5D17-2704

ON DISCRETIONARY REVIEW FROM  
THE FIFTH DISTRICT COURT OF APPEAL

**PETITIONER'S BRIEF ON JURISDICTION**

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PUBLIC DEFENDER  
SEVENTH JUDICIAL CIRCUIT

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## STATEMENT OF CASE AND FACTS

On December 7, 2018, the Fifth District Court of Appeal issued an opinion that the trial court erred in imposing a cost of investigation in the absence of a request and ordered that it be stricken, but noted that the State should be given the opportunity to request the imposition of the cost on remand. Richards v. State, 2018 WL 6422090 (Mem) (Fla. 5th DCA Dec. 7, 2018). Petitioner Richards filed his notice of intent to invoke this Court's jurisdiction on January 3, 2019.

Mr. Richards was charged with grand theft in case number 2016-301281-CFDB.<sup>1</sup> (R 74) He entered a plea of no contest and was sentenced to 36 months probation. (R 82, 108-11) The trial court questioned whether it "normally has what, a \$150 police agency fee?" (R 19) The State agreed and the trial court imposed an investigation cost of \$150 to the Daytona Beach Shores Police Department. (R 19, 85)

Mr. Richards filed a motion to correct sentencing error which challenged the imposition of the investigation cost. (R 132-35) It was argued that the record failed to include any written documentation supporting the cost. Likewise, no agent from the police department requested the cost. Therefore, it was imposed in

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<sup>1</sup> Case number 2014-303606-CFDB, involving a violation of probation, was also included in the Record on Appeal. That case has no bearing on the arguments herein because the cost at issue was not imposed.

error. (R 133) At the hearing on the motion, the trial court found that imposing a \$150 cost of investigation was “exactly what we typically do.” (R 161) Thereafter, the motion was denied. (R 143, 162)

Mr. Richards appealed the imposition of this cost and the Fifth DCA reversed and remanded for the trial court to strike the cost from the judgment, but noted that the State should be given an opportunity to request the imposition of investigative costs. Petitioner timely filed notice to invoke this Court’s jurisdiction.

## SUMMARY OF ARGUMENT

The Fifth District Court's decision correctly held that the trial court erred in imposing a cost of investigation in the absence of a request from the State or any evidence from the investigating agency. However, the Fifth DCA's decision to allow the State the opportunity to request the investigative cost on remand is in express and direct conflict with the First and Fourth District Courts of Appeal.

## ARGUMENT

THE FIFTH DCA'S DECISION EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISIONS OF THE FIRST AND FOURTH DISTRICT COURTS OF APPEAL AS TO THE STATE'S ABILITY TO SEEK IMPOSITION OF AN INVESTIGATIVE COST ON REMAND THAT WAS NEVER REQUESTED.

The Fifth District Court's decision properly held that it was error to impose a cost of investigation in the absence of a request from the State or any evidence from the investigating agency. The case was remanded for the trial court to strike the cost from the judgment, but it was noted that the State should be given the opportunity to request the imposition of the investigative cost. The Fifth DCA's decision to allow the State an opportunity to request an investigative cost on remand, when it was not requested originally, stems from their prior opinion in McCarthy v. State, 893 So. 2d 689 (Fla. 5th DCA 2005).

In McCarthy, it was "undisputed that neither the State Attorney's office nor the Daytona Beach Police Department requested or documented their costs." McCarthy, 893 So. 2d at 690. The court noted that when the State fails to offer proof to support a cost, they should be given a new hearing and another opportunity to offer proof. *Id.* Based on that, the court concluded:

If the courts do not view the failure to provide documentation at the first hearing as fatal, there seems to

be no good reason to find the failure to make the request to be fatal. We therefore reverse, but remand to give the State another opportunity to request and document the stricken costs.

*Id.*

The Second District Court of Appeal appears to align with the reasoning of the Fifth DCA. In Love v. State, 992 So. 2d 823 (Fla. 2d DCA 2008), the court held that it was error to impose a \$25 investigative cost because the record did not reflect that any agency requested payment of the cost. The court held that, on remand, the cost may be reimposed if the statutory requirements were met. Love, 992 So. 2d at 824. These holdings are in direct and express conflict with the First and Fourth District Courts of Appeal.<sup>2</sup>

The Fourth District Court of Appeal reversed the trial court's imposition of a \$50 cost of investigation "where the record [did] not demonstrate that the state requested reimbursement for these costs." Chambers v. State, 217 So. 3d 210, 214 (Fla. 4th DCA 2017). The trial court was directed, on remand, to strike the imposition of the costs, "but because the state did not request these investigative costs below, the trial court may not re-impose these costs." *Id.*

The First District Court of Appeal rejected the State's argument that,

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<sup>2</sup> It does not appear that the Third DCA has addressed this specific issue.

although there was no request on the record for the imposition of the Sheriff's Office Investigative Cost, affirmance was proper because the arrest report showed the actual cost incurred. Thomas v. State, 236 So. 3d 1159, 1161 (Fla. 1st DCA 2018). Instead, the court held:

Section 938.27(1), Florida Statutes, expressly provides that "convicted persons are liable for payment of the costs of prosecution, including investigative costs incurred by law enforcement agencies ... *if requested by such agencies.*" (Emphasis added.) Based on the plain language of the statute, the investigative costs must be stricken, and they may not be reimposed on remand.

Id.

"Conflict between decisions must be express and direct, i.e., it must appear within the four corners of the majority decision." Reaves v. State, 485 So. 2d 829, 830 (Fla.1986). The conflict here is apparent. This Court should take jurisdiction to resolve this conflict.

## CONCLUSION

This Court should exercise its discretionary jurisdiction in this matter.

Respectfully submitted,

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SEVENTH JUDICIAL CIRCUIT

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## CERTIFICATE OF FONT

I HEREBY CERTIFY that the font used in this brief is 14 point proportionally spaced Times New Roman.

## DESIGNATION OF E-MAIL ADDRESS

I HEREBY DESIGNATE the following e-mail addresses for purpose of service of all documents, pursuant to Rule 2.516, Florida Rules of Judicial Administration, in this proceeding: appellate.efile@pd7.org (primary) and funderburk.matthew@pd7.org (secondary).

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing has been filed electronically to the Florida Supreme Court, Supreme Court Building, 500 South Duval Street, Tallahassee, Florida 32399-1925, at www.myflcourtagency.com; delivered electronically to the Office of the Attorney General, 444 Seabreeze Boulevard, Fifth Floor, Daytona Beach, Florida 32118, at crimappdab@myfloridalegal.com; and a true and correct copy thereof delivered by mail to Mr. Ronald Richards, 2753 Terryville Road, Apt. 1, Canastota, NY 13032, on this 9th day of January, 2019.

/s/ Matthew Funderburk  
MATTHEW FUNDERBURK  
FLORIDA BAR NO. 0103301

IN THE SUPREME COURT OF FLORIDA

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Petitioner,

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Fifth DCA Case No. 5D17-2704

STATE OF FLORIDA,

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Appendix to Petitioner's Brief on Jurisdiction

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

RONALD JAMES RICHARDS,

Appellant,

v.

Case No. 5D17-2704

STATE OF FLORIDA,

Appellee.

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Opinion filed December 7, 2018

Appeal from the Circuit Court for  
Volusia County,  
Leah Case, Judge.

James S. Purdy, Public Defender, and  
Matthew Funderburk, Assistant Public  
Defender, Daytona Beach, for Appellant.

Pamela Jo Bondi, Attorney General,  
Tallahassee, and L. Charlene Matthews,  
Assistant Attorney General, Daytona  
Beach, for Appellee.

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.