

IN THE SUPREME COURT OF THE STATE OF FLORIDA

STATE OF FLORIDA

Petitioner,

v.

Case No. _____
5th DCA No. 5D18-2206

BRIAN K. MCKENZIE,

Respondent.
_____ /

ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

JURISDICTIONAL BRIEF OF PETITIONER

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF THE CASE AND FACTS1

SUMMARY OF THE ARGUMENT2

ARGUMENT

THERE IS EXPRESS AND DIRECT CONFLICT ON THE FACE OF THE
OPINION IN *MCKENZIE* WITH THE THIRD DISTRICT COURT OF
APPEAL’S OPINION IN *CUEVAS*, AND THEREFORE THIS COURT
SHOULD ACCEPT JURISDICTION.....3

CONCLUSION.....4

CERTIFICATE OF SERVICE4

CERTIFICATE OF COMPLIANCE.....5

TABLE OF AUTHORITIES

Cases

Cuevas v. State, 31 So. 3d 290 (Fla. 3d DCA 2010) 1, 2, 4

McKenzie v. State, 2019 WL 2062785 (Fla. 5th DCA May 10, 2019).....1, 4

Other Authorities

§ 775.21, Fla. Stat. (2018).....1, 3

Art. V, § 3, Fla. Const.3

Fla. R. App. P. 9.030(a)(2)(A)(iv)3

STATEMENT OF THE CASE AND FACTS

The Fifth District Court of Appeal's opinion in McKenzie v. State, 2019 WL 2062785 (Fla. 5th DCA May 10, 2019), reversed an order by the trial court designating Respondent as a sexual predator under section 775.21, Florida Statutes.¹ The Fifth District held that the court did not have jurisdiction to enter an order designating Respondent as a sexual predator after his sentence expired, and in so doing, certified conflict with Cuevas v. State, 31 So. 3d 290 (Fla. 3d DCA 2010).

¹ A copy of the opinion is attached.

SUMMARY OF THE ARGUMENT

This Court should accept jurisdiction in the instant case. On the face of the decision under review, there is express and direct conflict with Cuevas v. State, 31 So. 3d 290 (Fla. 3d DCA 2010).

ARGUMENT

THERE IS EXPRESS AND DIRECT CONFLICT ON THE FACE OF THE OPINION IN MCKENZIE WITH THE THIRD DISTRICT COURT OF APPEAL'S OPINION IN CUEVAS, AND THEREFORE THIS COURT SHOULD ACCEPT JURISDICTION.

Petitioner seeks discretionary review with this Honorable Court under Article V, Section 3(b)(3) of the Florida Constitution, which authorizes this Court to review express and direct conflicts between district courts of appeal. Art. V, § 3, Fla. Const. See also Fla. R. App. P. 9.030(a)(2)(A)(iv).

On May 10, 2019, the Fifth District Court of Appeal issued an opinion in this cause reversing an order of the trial court which designated Respondent as a sexual predator. The Fifth District held that the order was improperly entered because the trial court lacked jurisdiction, since Respondent had finished serving his sentence three years prior to the imposition of the sexual predator designation. In support of its conclusion, the Fifth District relied on section 775.21(5)(c), Florida Statutes, pertaining to individuals identified by the Department of Corrections, the Florida Department of Law Enforcement, or any other law enforcement agency as sexual predators, who were not previously designated as such in writing by the court, as required by section 775.21(5)(a). § 775.21, Fla. Stat. (2018). The Fifth District held that subsection (5)(c) did not include subsection 5(a)2.—the subsection applicable to Respondent—and that the lower

court therefore could not rely on subsection 5(c) to designate Respondent as a sexual predator after his sentence was complete. In reaching its decision, the Fifth District expressed agreement with the dissenting opinion in Cuevas, and certified conflict with the Cuevas majority, which, under factually indistinguishable circumstances, held that section 775.21(5)(c) did not provide an exclusive description of the circumstances under which the State can perform its duty under section 775.21(4)(a) to designate qualifying individuals as sexual predators, but instead, only created special notice and venue rules for individuals being designated under subsections (5)(a)1. and 3. Cuevas, 31 So. 3d at 292. Cuevas concluded that there was no error in the trial court designating Cuevas as a sexual predator after the expiration of his sentence, notwithstanding the fact that he did not fit into either of the categories described in subsections (5)(a)1. and 3. Id.

As the Fifth District Court of Appeal's opinion in McKenzie expressly and directly conflicts with the Third District Court of Appeal's opinion in Cuevas, jurisdiction should be accepted.

CONCLUSION

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing

Jurisdictional Brief of Petitioner has been furnished via Florida's E-Portal to counsel for Respondent, Terrance E. Kehoe, Esq., P.O. Box 540025, Orlando, FL 32854-0025, at tekehoelaw@aol.com, on June 5, 2019.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 14-point Times New Roman in compliance with Florida Rule of Appellate Procedure 9.210(a)(2).

Respectfully submitted,

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