

IN THE SUPREME COURT OF FLORIDA

JERMAINE EARL,

Petitioner,

Case No. SC19-1506

STATE OF FLORIDA,

Respondent.

JURISDICTIONAL BRIEF OF PETITIONER

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RECEIVED, 10/08/2019 09:56:33 AM, Clerk, Supreme Court

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PRELIMINARY STATEMENT

Petitioner, the State of Florida, the Appellee in the District Court of Appeal (DCA) and the prosecuting authority in the trial court, will be referenced in this brief as Petitioner, the prosecution, or the State. Respondent, Jermaine Earl, the Appellant in the DCA and the defendant in the trial court, will be referenced in this brief as Respondent or by proper name.

A bold typeface will be used to add emphasis. Italics appeared in original quotations, unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

On June 18, 2010, Petitioner was sentenced to two concurrent life sentences as a prison releasee reoffender for armed robbery with a firearm and kidnapping to facilitate felony with a firearm. Because he is a prison releasee reoffender, he was sentenced to serve 100 percent of the court imposed sentence. Since his judgement and sentence was issued on June 18, 2010, Petitioner has filed at least seventeen (17) motions for postconviction relief in the trial court, including the motion at issue in this case. In his most recent trial court motion, Petitioner argued that his sentence was illegal because the trial judge did not include, in his sentence, a ten year mandatory minimum for possession of a firearm. In denying that claim for relief, the trial court noted that, although the trial

judge could have included a ten year mandatory minimum in the sentences, the failure to do so did not make Petitioner's sentence illegal. It pointed out that such a determination would not have changed his incarceration by one day.

Petitioner appealed the trial court's ruling to the First District Court of Appeal in Case number 1D18-3828. The First District Court of Appeal held that the trial court's sentencing order was not adverse to Petitioner and dismissed the appeal. In its opinion, the First District acknowledged that the Third District and Fifth District have permitted defendants to raise the same issue through a rule 3.800(a) motion and have remanded for resentencing. However, it declined to follow those districts noting that:

While a sentence that fails to impose a mandatory minimum sentence may be "illegal" that illegality is in an appellant's favor. It is not adverse to him. "The general rule on appeal to review proceedings of an inferior court is that a party to the cause may appeal only from a decision in some respect adverse to him." *Credit Indus. Co. v. Remark Chem. Co.*, 67 So. 2d 540, 541 (Fla. 1953). "A party may ---appeal when his is 'aggrieved by the judgement.'" *Fountain v. City of Jacksonville*, 447 So. 2d 353, 354 (Fla. 1st DCA 1984).

SUMMARY OF ARGUMENT

The First District Court of Appeal dismissed Petitioner's appeal of the trial court's denial of his motion for postconviction relief in which he argued that his sentence was illegal because the trial court failed to impose a mandatory minimum for his possession of a firearm when he committed the offense. Earl v. State, 276 So. 3d 359 (1st DCA 2019). In its opinion, the First District agreed that Petitioner was correct in noting that the trial court should have imposed a mandatory minimum sentence in his case. However, it dismissed Petitioner's appeal because the order appealed was not adverse to him. That ruling is consistent with the ruling of this Court in Credit Indus. Co. v. Remark Chem. Co., supra. Although the Fifth and Third Districts have followed a different procedure and permitted defendants to raise this issue through a 3.800 motion, the opinion at issue does not contain an "express and direct" conflict in the law as established by this Court.

ARGUMENT

ISSUE I

HAS PETITIONER SHOWN A BASIS FOR THIS COURT
TO EXERCISE ITS DISCRETIONARY JURISDICTION?
(Restated)

Appellate Standard of Review and Jurisdictional Criteria

The applicable standard of review for claims of direct and express conflict is *de novo* subject to the following criteria.

Petitioner contends that this Court has jurisdiction pursuant to Fla. R. App. P. 9.030(a)(2)(A)(iv), which parallels Article V, § 3(b)(3), Fla. Const. The constitution provides: The supreme court ... [m]ay review any decision of a district court of appeal ... that expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law.

The conflict between decisions "must be express and direct" and "must appear within the four corners of the majority decision." Reaves v. State, 485 So.2d 829, 830 (Fla. 1986). Accord Dept. of Health and Rehabilitative Services v. Nat'l Adoption Counseling Service, Inc., 498 So.2d 888, 889 (Fla. 1986) (rejected "inherent" or "implied" conflict; dismissed petition). Neither the record, nor a concurring opinion, nor a dissenting opinion can be used to establish jurisdiction.

Reaves, supra; Jenkins v. State, 385 So.2d 1356, 1359 (Fla. 1980) ("regardless of whether they are accompanied by a dissenting or concurring opinion"). Thus, conflict cannot be based upon "unelaborated per curiam denials of relief," Stallworth v. Moore, 827 So.2d 974 (Fla. 2002).

In addition, it is the "conflict of decisions, not conflict of opinions or reasons that supplies jurisdiction for review by certiorari." Jenkins, 385 So. 2d at 1359.

In Ansin v. Thurston, 101 So. 2d 808, 810 (Fla. 1958), this Court explained:

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.

In the case at bar Petitioner was sentenced to serve 100 percent of two concurrent life sentences as a prison releasee reoffender. Eight years after his judgement and sentence was filed, Petitioner argued in a motion to correct illegal sentence that his sentence was illegal because the trial judge did not

include a ten year mandatory minimum for possession of a firearm. In denying that claim for relief, the trial court noted that, although the trial judge could have included a ten year mandatory minimum in the sentences, the failure to do so did not make Petitioner's sentence illegal. It pointed out that such a determination would not have changed his incarceration by one day.

On appeal, the First District held that the trial court's sentencing order was not adverse to Petitioner and dismissed the appeal. It pointed out that "[t]he general rule on appeal to review proceedings of an inferior court is that a party to the cause may appeal only from a decision in some respect adverse to him. "Credit Indus. Co. v. Remark Chem. Co., 67 So. 2d 540, 541 (Fla. 1953). "A party may appeal when he is aggrieved by the judgement." Fountain v. City of Jacksonville, 447 So. 2d 353, 354 (Fla. 1st DCA 1984).

Although the Third and Fifth Districts followed a different procedure and permitted defendants to raise this issue through a rule 3.800 motion, the opinion at issue does not contain an "express and direct" conflict in the law. The First District's opinion is consistent with this Court's opinion in Credit Indus. Co. v. Remark Chem Co., supra. In that case, this Court held that,

In accordance with the fundamental rule that to be entitled to appeal a person must be aggrieved by the judgement, an appeal from a declaratory judgement will be dismissed where there is nothing in it prejudicial to the claimed rights of the appellant.

Id. at 541. It pointed out that:

When a litigant succeeds in obtaining all he asks in the trial court having jurisdiction of the cause, he no longer has a grievance to be corrected by an appeal to a reviewing court, whose chief duties are to correct abuses in the trial court, whereby the rights of a litigant were prejudiced and he was thereby deprived of his just dues under the law. When he has no such grievance, he is not entitled by appeal to have the appellate court approve the judgement in his favor.

Id., quoting Maddox v. Giltner, 226 Ky. 578,579, 11 S.W. 2d 426.

It is clear that Petitioner was not "aggrieved" by the judgement in his case. The trial court's failure to impose a mandatory minimum was not adverse to him. A resentencing to add a mandatory minimum term to Petitioner's sentence is not something that would change his incarceration at all, since he was sentenced to two terms of life in prison which he was ordered to serve day for day. He is months away from having served the first ten years of his sentence anyway, so even if he was resentenced to add a minimum mandatory at this point, it would be moot.

The Third and Fifth Districts followed a different procedure in their approach to trial court error that worked to benefit a defendant. They both held that nothing prevented a defendant from filing a 3.800 motion to seek a remedy that was adverse to them. However, it is clear that neither of them considered this Court's decision in Credit Indus. Co. v. Remark Chem. Co., supra.

Even if this Court finds there is a conflict, adding a mandatory minimum in this case is a useless act and waste of judicial resources. This Court should not accept jurisdiction for acts of futility. Therefore, this Court should decline jurisdiction.

CONCLUSION

Based on the foregoing reason, the State respectfully requests this Honorable Court decline to exercise its jurisdiction in this cause.

SIGNATURE OF ATTORNEY AND CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to Jermaine Earl, DC# 582568, Franklin Correctional Institution, 1760 Hwy. 67 North, Carrabelle, Florida 32322, on this 8th day of October 8, 2019.

Respectfully submitted and served,

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the font requirements of Fla. R. App. P. 9.210.

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