

IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. SC19-1511

DAVID PUZIO,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

RESPONDENT'S BRIEF ON JURISDICTION

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PRELIMINARY STATEMENT

Petitioner is the Defendant and Respondent is the prosecution. Petitioner was the Appellant and Respondent was the Appellee in the Fourth District Court of Appeal. In this brief, the parties shall be referred to as they appear before this Honorable Court except that Respondent may also be referred to as the State.

All emphasis in this brief is supplied by Respondent unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

Respondent does not agree with Petitioner's statement of the case and facts or many of the alleged "facts" in the argument portion of the initial brief. Petitioner improperly includes many alleged "facts" not in the Fourth District's opinion in an attempt to show conflict and argue the merits of the opinion. See Reaves v. State, 485 So. 2d 829, 830 (Fla. 1986) ("Conflict between decisions must be express and direct, i.e., it must appear within the four corners of the majority's decision.") and Mystan Marine, Inc. v. Harrington, 339 So. 2d 200, 210 (Fla. 1976) (This Court's discretionary jurisdiction is directed to a concern with decisions as precedents, not adjudications of the rights of particular litigants).

The Fourth District substituted the original May 8, 2019 opinion with its August 7, 2019 opinion. The supposed contents of the original opinion referenced by Petitioner are irrelevant (initial brief p. 6/PDF 9). Petitioner's claim regarding what he argued in his motion for rehearing is not part of the current opinion and is improperly included in his statement of the facts (initial brief p. 2/PDF 5). The opinion does not indicate that the trial court first said it would have imposed the same sentence under § 775.082(1)(b)2, Fla. Stat. in its written order detailing its findings (initial brief p. 3/PDF 6). The opinion does not indicate that the trial court judge concluded the

Petitioner shot and killed the victims (initial brief p. 1/PDF 4) (there are different ways of being culpable under § 775.082(1)(b)1.). The opinion does not indicate what cases the State cited in a response or even if the State's argument was made in a response (initial brief p. 3/PDF 6). The opinion does not indicate the details of what happened during the 2018 period during which the trial court made written findings, including the extent of the parties participation during that period (initial brief p. 8/PDF 11). The opinion does not indicate that the case was relinquished or the scope of any relinquishment (initial brief pp. 2-3/PDF 5-6). The opinion does not indicate the contents of the transcript of the 2017 sentencing hearing (initial brief p. 9/PDF 12).

The opinion does indicate Petitioner was found guilty of carjacking and first degree murder of two women (slip op. p. 2). In 2017, Petitioner appeared before the trial court for resentencing pursuant to Miller v. Alabama, 567 U.S. 460 (2012), which held that a "mandatory life-without-parole sentences for juveniles violate the Eighth Amendment Id. at 470 (slip op. p. 2). The trial court sentenced Petitioner Appellant pursuant to § 775.082(1)(b)1. Fla. Stat., to sixty years in prison (slip op. p. 4). In 2018, the trial court issued a sentencing order to detail its resentencing findings in writing. That order stated that although the trial court proceeded under § 775.082 (1)(b)1., it

found the sixty-year sentence equally appropriate under § 775.082(1)(b)2. (slip op. p. 4).

The Fourth District found that in accordance with Williams v. State, 242 So.3d 280 (Fla. 2018), a jury is required to make the finding of whether a defendant actually killed, intended to kill, or attempted to kill the victims in this case. The District Court further found that the trial court erred in sentencing Petitioner under § 775.082(1)(b)1. because the jury did not make that finding. Although there was evidence the defendant was the shooter, the defendant presented evidence that he was not the shooter. (slip op. p. 5). The opinion concluded that, therefore, the error was not harmless (Id.).

The Fourth District remanded for the correction of Petitioner's sentence on the first degree murder counts under 775.082(1)(b)2., entitling Petitioner to review after serving fifteen years. The opinion indicates that Petitioner was not entitled to a new sentencing hearing under the facts of this case because the trial court made a specific finding it would have imposed the same sentence under § 775.082(1)(b)2. (slip op. p. 6).

SUMMARY OF THE ARGUMENT

There is no express and direct conflict. The Fourth District's opinion on rehearing conflicts with nothing.

ARGUMENT

THE FOURTH DISTRICT'S OPINION DOES NOT EXPRESSLY AND DIRECTLY CONFLICT ANY OPINION OF THIS COURT OR ANOTHER DISTRICT COURT OF APPEAL.

For two court decisions to be in express and direct conflict for the purpose of invoking this Court's discretionary jurisdiction under Florida Rule of Appellate Procedure 9.030(a)(2)(A)(iv), the decisions should speak to the same point of law, in factual contexts of sufficient similarity to permit the inference that the result in each case would have been different had the deciding court employed the reasoning of the other court. See generally Mancini v. State, 312 So. 2d 732 (Fla. 1975). The conflict must be of such magnitude that if both decisions were rendered by the same court, the later decision would have the effect of overruling the earlier decision. Kyle v. Kyle, 139 So. 2d 885, 887 (Fla. 1962). See also Reaves, 485 So. 2d at 830 (Fla. 1986) ("Conflict between decisions must be express and direct, i.e., it must appear within the four corners of the majority's decision.") and Mystan Marine, 339 So. 2d at 210 (Fla. 1976) (This Court's discretionary jurisdiction is directed to a concern with decisions as precedents, not adjudications of the rights of particular litigants).

Petitioner first claims the Fourth District's opinion conflicts with Williams v. State, 242 So. 2d 280 (Fla. 2018) and Leppert v. State, 249 So.3d 1322 (Fla. 5th DCA 2018). The facts of the present opinion are easily distinguishable. Neither of those cases involve a trial court indicating that it would have imposed the same sentence under § 775.082(1)(b)2. There is no express and direct conflict.

Respondent also notes that the opinion indicates the trial court's statement was made sometime in 2018. Williams was decided in early 2018. It is not clear from the opinion whether the trial court made this statement after Williams was decided. In other words, the trial court may have specifically stated it would have imposed the same sentence, after considering the holding in Williams. That clearly did not happen in Williams or Leppert. There is no express and direct conflict.

Petitioner next claims the Fourth District's opinion conflicts with Ashley v. State, 850 So. 2d 1265 (Fla. 2003) and State v. Jones, 753 So. 2d 1276 (Fla. 2000).

Those cases are inapposite. This case involves the statement of a trial court's intent, not a deviation from an orally imposed sentence in a written order. There is no express and direct conflict.

Additionally, contrary to the alleged "facts" in Petitioner's brief, the Fourth District's opinion did not

indicate there was no oral statement of the trial court's intent to impose the same sentence either at the time of the sentencing in 2017 or during the time the trial court issued its order in 2018.

The opinion indicates that there was no hearing or notice to the parties regarding the disposition order imposing a minimum mandatory (slip op. 4). The opinion does not indicate the circumstances surrounding the sentencing order in which the trial court indicated it would impose the same sentence under subsection 775.082(1)(b)1.

Finally, Petitioner claims the Fourth District's opinion conflicts with its decision in Hadley v. State, 190 So.3d 217 (Fla. 4th DCA 2016).

An intradistrict conflict, even if it existed, is not a basis for jurisdiction. In 1980, Fla. R. App. P. 9.030(a) was extensively revised; one change was to eliminate this Court's jurisdiction in cases of intradistrict conflict. See Committee Notes to 1980 Amendments to Rule 9.030(a).

Intradistrict conflict is resolved by a request for en banc review of the decisions. Even where the district court declines to resolve the conflict within its district, the latest decision is deemed to overrule the former decision. See State v. Walker, 593 So. 2d 1049 (Fla. 1992); Little v. State, 206 So. 2d 9, 10 (Fla. 1968).

There is no intradistrict express and direct conflict. In Hadley, unlike this case, the trial court did not make a finding that it would have imposed the same sentence if section 775.082(1)(b)2. applied.

CONCLUSION

Based on the preceding argument and authorities, Respondent respectfully requests this Court to DECLINE to review the opinion.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing "Respondent's Brief on Jurisdiction" has been furnished via the portal on October 16, 2019 to kevinkulik.law@gmail.com (500 SW Third Avenue, Feet. Lauderdale, FL 33315).

/s James J. Carney

Of Counsel

CERTIFICATE OF TYPE SIZE AND STYLE

In accordance with the Administrative Order of this Court dated July 13, 1998, the undersigned hereby certifies that the instant brief has been prepared with 12 point Courier New type, a font that is not proportionately spaced.

/s James J. Carney

JAMES J. CARNEY

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