

IN THE SUPREME COURT OF FLORIDA

JUAN C. CASIANO,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Case No. SC19-1622

JURISDICTIONAL BRIEF OF RESPONDENT

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RECEIVED, 10/25/2019 11:16:35 AM, Clerk, Supreme Court

**TABLE OF CONTENTS**

|                                                                                                                                                                                              |    |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| TABLE OF AUTHORITIES.....                                                                                                                                                                    | ii |
| PRELIMINARY STATEMENT.....                                                                                                                                                                   | 1  |
| STATEMENT OF THE CASE AND FACTS.....                                                                                                                                                         | 1  |
| SUMMARY OF THE ARGUMENT.....                                                                                                                                                                 | 2  |
| ARGUMENT:                                                                                                                                                                                    |    |
| <b>The decision of the Fourth District Court of<br/>    Appeal is in direct and express conflict<br/>    with <i>Johnson v. State</i>, 260 So. 3d 502 (Fla.<br/>    1st DCA 2018).</b> ..... | 2  |
| CONCLUSION.....                                                                                                                                                                              | 5  |
| CERTIFICATE OF SERVICE.....                                                                                                                                                                  | 6  |
| CERTIFICATE OF COMPLIANCE.....                                                                                                                                                               | 6  |

## **TABLE OF AUTHORITIES**

### **Cases:**

|                                                                                          |            |
|------------------------------------------------------------------------------------------|------------|
| <i>Casiano v. State</i> , 4D18-3255, 2019 WL 4458740 (Fla. 4th DCA Sept. 18, 2019) ..... | 2, 3, 4    |
| <i>Gibson v. Maloney</i> , 231 So. 2d 823, 824 (Fla. 1970)) .....                        | 3          |
| <i>Jenkins v. State</i> , 385 So. 2d 1356, 1359 (Fla. 1980) .....                        | 3          |
| <i>Johnson v. State</i> , 260 So. 3d 502 (Fla. 1st DCA 2018) ...                         | 2, 3, 4, 5 |
| <i>Jollie v. State</i> , 405 So. 2d 418 (Fla. 1981) .....                                | 2, 5       |

### **Constitutional Provisions:**

|                                         |   |
|-----------------------------------------|---|
| Art. V, Sect. 3(b)(3), Fla. Const. .... | 2 |
|-----------------------------------------|---|

### **Rules:**

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

### **PRELIMINARY STATEMENT**

Petitioner was the defendant and Respondent was the Prosecution in the Criminal Division of the Circuit Court of the Nineteenth Judicial Circuit, in and for Indian River County, Florida. Petitioner was Appellant and Respondent was Appellee in the District Court of Appeal of Florida, Fourth District.

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. "JIB" refers to Petitioner's Brief on Jurisdiction.

### **STATEMENT OF THE CASE AND FACTS**

In determining jurisdiction, this Court is limited to the facts apparent on the face of the opinion in *Casiano v. State*, 4D18-3255, 2019 WL 4458740 (Fla. 4th DCA Sept. 18, 2019). Respondent accepts Petitioner's "Statement of the Case and Facts." Like Petitioner, the State will cite to the opinion provided in Petitioner's appendix with "Slip. Op." and the page number.

### **SUMMARY OF THE ARGUMENT**

The State agrees that the Fourth District Court of Appeal opinion directly and expressly conflicts with *Johnson v. State*, 260 So. 3d 502 (Fla. 1st DCA 2018) on the same issue of law. This issue is whether the defendant's release from prison during the pendency of his appeal rendered moot his challenge to the trial court's sentence as related to the trial court's dangerousness finding under section 775.082(10), Florida Statutes. The Fourth District found that the issue was moot, while the First District concluded the issue was not moot. This Court has conflict jurisdiction.

This Court does not have jurisdiction pursuant to *Jollie v. State*, 405 So. 2d 418 (Fla. 1981), because the Fourth District Court of Appeal opinion is not a per curiam opinion that cites to a case that is pending in this Court.

### **ARGUMENT**

#### **I. This Court has conflict jurisdiction.**

The Florida 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." Article V, §3(b)(3), Fla. Const.; see also Fla. R. App. P. 9.030(a)(2)(A)(iv). "[I]t is conflict of decisions, not conflict of opinions or reasons that supplies

jurisdiction for review by certiorari." *Jenkins v. State*, 385 So. 2d 1356, 1359 (Fla. 1980) (quoting *Gibson v. Maloney*, 231 So. 2d 823, 824 (Fla. 1970)).

In this case, the Petitioner "raise[d] two challenges to the prison sentences he received after entering a partially negotiated no contest plea to several driving offenses." Slip. Op. 1. He claimed first that the "court erred when it, and not a jury, made a finding that he was a danger to the public under section 775.082(10), Florida Statutes (2018)," and second that "the court's findings were *legally insufficient* to demonstrate that he would pose a danger to the community if sentenced to a nonstate prison sanction." Slip. Op. 1 (emphasis added).

During the appeal, Petitioner "served his sentence and was released from prison," and the Fourth DCA concluded that "Casiano's appeal therefore is moot." *Id.* at 2. The Fourth District "recogniz[ed] Casiano's argument that a collateral consequence may flow from his sentence: his potential designation as a prison releasee reoffender [("PRR")] under section 775.082(9)(a)1., Florida Statutes," but it did not alter the finding of mootness. See *id.* at 3-4.

In *Johnson*, the appellant "appeal[ed] his sentence and argu[ed] that the trial court erred in denying his motion to correct a sentencing error . . . because its finding that he posed a danger to the public warranting an enhanced sentence

under section 775.082(10), Florida Statutes (2017), was insufficient and not supported by the record.” 260 So. 3d at 503. This is similar to the second ground argued by Petitioner.

The appellant served his entire sentence during the pendency of his appeal. See *id.* at 505. The State argued on appeal that the issue was moot, and the dissent agreed. See *id.* at 505, 509.

However, the majority opinion in *Johnson* found that the issue was not moot, because the appellant could be subject to PRR sentencing in the future as a result of the trial court’s allegedly illegal sentence. See *id.* at 505-06. The First District proceeded to the merits of the appeal. See *id.* at 506-09.

In summary, Petitioner and the appellant in *Johnson* both challenged the legality of their sentences as related to the trial court’s dangerousness findings under section 775.082(10). Both Petitioner and appellant served the entirety of their sentences during the pendency of their appeals. However, the Fourth District found that Petitioner’s appeal was moot due to the Petitioner having served his entire sentence, while the majority opinion from the First District found that the appellant’s appeal was not moot. The Fourth District discussed *Johnson* and stated that it agreed with the dissent in *Johnson*. See Slip. Op. 3.

The State agrees that the Fourth District's ruling is in direct and express conflict with *Johnson*.

## **II. Jurisdiction does not exist pursuant to *Jollie v. State*.**

In *Jollie*, this Court stated: "We thus conclude that a *district court of appeal per curiam opinion which cites as controlling authority a decision* that is either pending review in or has been reversed by this Court continues to constitute prima facie express conflict and allows this Court to exercise its jurisdiction." *Id.* at 420 (emphasis added).

Clearly, the Fourth District opinion does not fall into this narrow category of cases that gives this Court "prima facie express conflict." The opinion below is not a "per curiam opinion which cites as controlling authority a decision that is either pending review in or has been reversed by this Court." *Id.*

This Court does not have jurisdiction under *Jollie*.

## **CONCLUSION**

Based on the foregoing, the State respectfully acknowledges that this Court has conflict jurisdiction.

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing is being served via the Florida Court's E-Filing Portal to: Benjamin Eisenberg, Assistant Public Defender, 421 Third Street, West Palm Beach, FL 33401, at [appeals@pd15.state.fl.us](mailto:appeals@pd15.state.fl.us), [beisenberg@pd15.state.fl.us](mailto:beisenberg@pd15.state.fl.us), and [gztaylor@pd15.state.fl.us](mailto:gztaylor@pd15.state.fl.us), this 25th day of October, 2019.

**CERTIFICATE OF COMPLIANCE**

I certify that this brief was computer generated using Courier New 12 point font.

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