

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,)
)
 Petitioner,)
)
 vs.)
)
 RIDGE GABRIEL,)
)
 Respondent.)
 _____)

DCA NO. 5D18-3264
 CASE NO. SC19-2155

ON DISCRETIONARY REVIEW
 FROM THE FIFTH DISTRICT COURT OF APPEAL

RESPONDENT’S JURISDICTIONAL BRIEF

JAMES S. PURDY
 PUBLIC DEFENDER
 SEVENTH JUDICIAL CIRCUIT

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PRELIMINARY STATEMENT/ INTRODUCTION

Petitioner was the prosecution in the Criminal Division of the Circuit Court of the Ninth Judicial Circuit, in and for Orange County, Florida and Respondent was the Defendant. Respondent was the Appellant and Petitioner was the Appellee in the Fifth District Court of Appeal. In this brief, the parties shall be referred to as they appear before this Honorable Court except that Petitioner may also be referred to as the State.

STATEMENT OF THE CASE AND FACTS

The pertinent history and facts are set out in the Fifth District Court of Appeal's (Fifth District) opinion cited in Petitioner's statement of case and facts, then attached to Petitioner's jurisdictional brief. The Fifth District did certify conflict with the Second District's opinion in Champagne v. State, 269 So. 3d 629 (Fla. 2d DCA 2019) and certified a question of great public importance.

The argument on this opinion was presented to the Fifth District in Gabriel v. State, 248 So. 3d 265 (Fla. 5th DCA 2018). On remand, the Circuit Court accepted Respondent's not guilty plea and request for a continuance in the primary offense, attempted first-degree murder of a law enforcement officer. Petitioner entered an open plea to the other three charges and appealed the sentence to the Fifth District. Their opinion followed.

Footnote 2 of Champagne notes the sentence court in 2005, found Champagne qualified in his case to be sentenced as a Habitual Felony Offender, Habitual Violent Felony Offender, Three time Violent Felony Offender , and Violent Career Criminal (VCC). The sentence Court imposed an enhanced sentence of mandatory life as a Violent Felony Offender and VCC, on the primary offense Robbery with a Firearm. Respondent was a seventeen year-old juvenile on the 2013 offense date.

SUMMARY OF ARGUMENT

The Fifth District did certify conflict with the Second District and certified a question to this Court. The opinions from the District Courts reach opposite conclusions on the same point of law, but the cases are factually distinguishable. Also, this case is unique on its facts and does not present a recurring legal issue of statewide significance. Therefore, this Court should decline jurisdiction to review the Fifth District's opinion in this case.

ARGUMENT

DESPITE A CERTIFIED CONFLICT WITH THE
SECOND DISTRICT AND CERTIFIED QUESTION,
THE CASES ARE DISTINGUISHABLE AND
WITHOUT A RECURRING LEGAL ISSUE OF
STATEWIDE SIGNIFICANCE, THIS COURT
SHOULD DECLINE TO EXERCISE JURISDICTION.

Respondent acknowledges this Honorable Court has authority to exercise discretionary review of the Fifth District’s opinion under both Florida Rule of Appellate Procedure 9.030(a) (2)(A) (iv) and 9.030 (a) (2) (A) (v). The 1980 revisions to the Florida Constitution were intended, in part, to limit the jurisdiction of the Supreme Court to review only those district court opinions that expressly and directly conflict with the decisions of another District Court of Appeal. *See Reaves v. State*, 485 So. 2d 829 (Fla. 1986) (this Court's discretionary jurisdiction exists only if the conflict between district court decisions is express and direct). This means that the district court decision must “expressly address[] a question of law within the four corners of the opinion itself by ‘contain[ing] a statement or citation effectively establishing a point of law upon which the decision rests.’” *Persaud v. State*, 838 So. 2d 529 (Fla. 2003) (citations omitted).

The Second District and Fifth District reached different conclusions on Section 921.0024(2), of the Criminal Punishment Code (“CPC”). However,

review is not necessary and this case is both distinguishable in the parties and it is a rare set of facts. On the offense date, Respondent was a seventeen year-old juvenile. The Florida legislature have enacted juvenile sentence statutes to address and consider the juveniles lack of maturity and future rehabilitation as opposed to the goal of punishment for an adult repeat offender like Champagne.

Footnote two in Champagne questions if the additional offense of false imprisonment should have been the primary offense, but the issue was not raised. It also notes the sentence court in 2005, found Champagne qualified for and was designated to be sentenced as a Three Time Violent Felony Offender and a V.C.C.. The sentence was enhanced under the habitual offender statute to a mandatory life in Champagne's primary offense, Robbery with a Firearm. A C.P.C. scoresheet sentence was imposed for false imprisonment, the additional offense. Sentences under Section 775.084 are not subject to a C.P.C. sentence under Section 921.002. See Section 775.084(4)(h), Florida Statutes (2005). Section 775.084(3)(c) 5., Florida Statutes (2005), provides that if the court finds the defendant meets the criteria under subsection (1) for imposing a violent career criminal sanction, and finds the classification is not necessary for protection of the public, the court **must** sentence the defendant as a Violent Career Criminal. (Emphasis added) See State v. Meyers, 708 So. 2d 661 (Fla. 3d DCA 1998). Instead, Champagne received a

scoresheet sentence.

Both the Second District and Fifth District have certified questions of great public importance about the appropriate minimum sentences for additional offenses under the C.P.C. scoresheet. With a primary sentence goal of punishment and the greatest punishable offense listed as the primary offense, this court should expend its limited resources on larger issues. Jurisdiction over questions of great public importance is limited to cases which generate recurring legal issues of statewide significance. *See Philip J. Padovano, Florida Appellate Practice* § 3.11 (1997 ed).

The Criminal Punishment Code was enacted over twenty years ago. The maximum sentence for an additional offenses has been without conflict since. The law is clear with the maximum punishments to be imposed placed in the scoresheet as the primary offense, or in an enhanced statutes, with the lesser, additional offenses reserved for judicial discretion to order consecutive, concurrent prison sentences, probation or time served.

The mandatory life sentence Champagne received as a Three Time Violent Felony Offender for the primary offense, renders his additional, concurrent sentence almost moot. The procedure of this case in reaching this juncture is unique. When this sentence argument was not addressed in Gabriel's first appeal

and send back on remand, Gabriel chose not to plea in the primary offense to keep the minimum sentence lower. Therefore, he pled to the two lesser offenses. The prosecutor nolle prossed the primary offense if the court approved the State's attempt to increase the overall sentence length with an increased, consecutive sentences in both additional offenses. The facts before this Honorable Court are a truly rare set of circumstances on a narrow point of law, unlikely to resurface across the State. Respondent contends the opinion reached by the Fifth District below is proper and clear.

CONCLUSION

Based on the foregoing facts, argument, and citations of authority, Respondent respectfully requests that this Honorable Court decline to exercise jurisdiction for review of the decision of the Fifth District Court of Appeal.

Respectfully submitted,

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s/ KEVIN R. HOLTZ _____

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CERTIFICATE OF SERVICE

A true and correct copy of the foregoing has been served on Assistant Attorney General Wesley Heidt, at crimappdab@myfloridalegal.com, this 3rd day of February, 2020.

DESIGNATION OF EMAIL

The undersigned designates the following email addresses for purposes of service of all documents, pursuant to Rule 2.516, in this proceeding: appellate.efile@pd7.org as its primary email address and holtz.kevin@pd7.org as its secondary address.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this brief complies with Rule 9.210(2)(a), Florida Rules of Appellate Procedure, in that it is set in Times New Roman 14-point font.

s/ Kevin Holtz
Kevin Holtz