

IN THE SUPREME COURT OF FLORIDA
TALLAHASSEE, FLORIDA

HENRY MARTIN STEIGER,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Case Number: SC20-1404

DCA Case Number: 1D19-3217

L.T. Case Number:
172018CF004365XXXAX

PETITIONER'S JURISDICTIONAL BRIEF

On Discretionary Review from the District Court of Appeal, First District

Jared Brown, Esq.

Florida Bar #30075

Brown Legal PLLC

101 N.E. Third Ave

Lobby Suite 110

Fort Lauderdale, FL 33301

Office: (954) 524-6700

Email: jared@jaredbrownlaw.com

Counsel for Appellant

Martin Roth, Esq.

Florida Bar #265004

Martin L. Roth, P.A.

1700 East Las Olas Blvd.

Suite 307

Fort Lauderdale, FL. 33301

Office: (954) 745-7697

Email: mlrpa@msn.com

Counsel for Appellant

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STATEMENT OF THE CASE AND FACTS

On direct appeal, Mr. Steiger raised an ineffective assistance of counsel claim since his trial counsel, despite his client facing a life sentence, objected to almost nothing when faced with rampant opportunity to exclude materially prejudicial and inadmissible evidence. He allowed the prosecution to call Mr. Steiger's personal lawyer to testify against him to communications tantamount to a confession. Remarkably, he did not raise the issue of attorney client privilege. He allowed the prosecution to admit double digit references to Mr. Steiger's wholly unrelated prior criminal conduct, including federal convictions, during the state's case in chief. Then, rather than object, move for a mistrial or argue a William's Rule violation, counsel advised Mr. Steiger, on the record, against pursuing a mistrial, raising an objection or even requesting a limiting instruction. Trial counsel also allowed the prosecution to admit extensive incriminating evidence, including the defendant's recorded telephonic statement where the defendant, contrary to the defendant's trial defense, denied knowing the whereabouts of the decedent. The detective who took the statement was never called to testify to lay a foundation for the statement to be admitted. The detective was never cross-examined by the defense on the statements he made on the recorded conversation. In his brief to the First District Court of Appeal, Mr. Steiger painstakingly recounted his trial counsel's failings in both an individual and cumulative capacity.

When authoring its opinion, the district court declined to rule on the thoroughly briefed ineffective assistance of counsel issue on direct appeal without attempting to distinguish cases which, in limited circumstances, allow the practice. The district court decision is in direct conflict with opinions issued by the Second District Court of Appeal, the Fourth District Court of Appeal and even its own district. By refusing to address the properly preserved issue this opinion by the First District Court of Appeal expressly and directly conflicts with decisions from another district court of appeal on the same question of law.

STATEMENT OF THE ISSUES

1. The district court failed to conduct an analysis of whether the record demonstrated ineffective assistance of counsel that was obvious, indisputable and without any conceivable tactical explanation, in conflict with *Howard v. State*, 288 So. 3d 1239 (Fla. 2d DCA 2020).

SUMMARY OF THE ARGUMENT

Mr. Steiger raised a properly preserved claim of ineffective assistance of counsel claim for the district court to review on direct appeal. Instead of reviewing the issue that was raised on appeal, the district court decided, contrary to Second and Fourth District Courts of Appeal opinions, that Mr. Steiger should have argued that the facts set forth in the record presented a case demonstrating fundamental error. Because that issue was not presented in the initial brief, the district court also

declined to address the alleged errors under the fundamental error standard. The district court ignored express and directly conflicting jurisprudence on the same question of law in favor of a concurring opinion in a decision from its own district. However, the majority opinion from the same district as well as the pertinent statute cited in the concurrence support Mr. Steiger's right to review.

ARGUMENT

THE DISTRICT COURT FAILED TO CONDUCT AN ANALYSIS OF WHETHER THE RECORD DEMONSTRATED INEFFECTIVE ASSISTANCE OF COUNSEL THAT WAS OBVIOUS, INDISPUTABLE AND WITHOUT ANY CONCEIVABLE TACTICAL EXPLANATION, IN CONFLICT WITH HOWARD V. STATE, 288 SO. 3D 1239 (FLA. 2D DCA 2020)

Florida Rule of Appellate Procedure 9.030(a)(2)(A)(iv) confers discretionary jurisdiction when a district court rules expressly and directly in conflict with another district court of appeal on the same question of law. Yet, rather than address the facially obvious claim of ineffective assistance of counsel in accordance with a whole body of jurisprudence, the First District Court of Appeal declined to consider the issue, citing one of its own concurring opinions.

District courts other than the First District Court of Appeal have addressed ineffective assistance of counsel claims on direct appeal without finding or requiring a defendant to argue fundamental error. *Howard v. State*, 288 So. 3d 1239 (Fla. 2d DCA 2020); *Kruse v. State*, 222 So. 3d 13 (Fla. 4th DCA 2017). They consider the longstanding *Strickland* standard on direct appeal when the

record is well developed to avoid wasting judicial resources. *Howard*, 288 So. 35 at 1249; *Kruse*, 222 So. 3d at 17.

The First District Court of Appeal preference for review of trial counsel's performance only after the litigation of a Rule 3.850 motion increases the expenditure of judicial resources in a case where ineffectiveness is clear from the record. The most obvious of the two flaws created by resting upon *Latson v. State*, 193 So. 3d 1070, 1072 (Fla. 1st DCA 2016) is that the district court converts a concurrence which contradicts on-point precedent to binding law. District court opinions represent the law of Florida unless overruled by the Supreme Court. *Pardo v. State*, 596 So. 2d 665, 666 (Fla. 1992). Here, Florida district court precedent clearly supports direct review of this ineffective assistance of counsel claim as preserved by Mr. Steiger.

More importantly, the *Latson* opinion actually follows the Second and Fourth Districts despite the First District's misinterpretation. Although the district court relied upon the concurring opinion, the majority opinion does not require proof of fundamental error exclusively to address an ineffective assistance of counsel claim on direct appeal. *Latson*, 193 So. 3d at 1071. Instead, the legally binding part of the opinion requires "ineffectiveness so obvious on the face of the appellate record, the prejudice caused by the conduct is indisputable and a tactical explanation of the conduct is inconceivable." *Id.* The phrase fundamental error is

nowhere to be found in the part of the opinion having precedential value. *Id.* Therefore, its confounding to this and to future litigants that the district court required this unnecessary act from Mr. Steiger when the First District opinion it relied upon did not. The decision reverses the district's prior precedent.

To support its point, the district court and *Latson's* concurrence references the following statute, "[A] judgment or sentence may be reversed on appeal only when an appellate court determines after a review of the complete record that prejudicial error occurred and was properly preserved in the trial court or, if not properly preserved, would constitute fundamental error." *See* Fla. Stat. § 924.051. Other districts have concluded that, in limited circumstances, where the ineffectiveness is clear, a district court can reverse a conviction where a defendant was deprived of the right to effective assistance of counsel. Those courts found no inconsistency with the referenced statute. Therefore, Mr. Steiger asserts that the district court ruling is in express and direct conflict with the Second District, the Fourth District and on the same question of law and warrants the Supreme Court invoking its discretionary jurisdiction.

CONCLUSION

For the abovementioned reasons, this Honorable Court should invoke its discretionary jurisdiction.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the foregoing has been furnished to the Clerk of Court and Office of the Attorney General via the electronic filing portal this 2d day of October, 2020.

Respectfully Submitted,

/s/ Jared Brown

Jared Brown, Esq.
Florida Bar #30075
Brown Legal PLLC
101 N.E. Third Ave
Lobby Suite 110
Fort Lauderdale, FL 33301
Office: (954) 524-6700
Email: jared@jaredbrownlaw.com

/s/ Martin Roth

Martin Roth, Esq.
Florida Bar #265004
Martin L. Roth, P.A.
1700 East Las Olas Blvd.
Suite 307
Fort Lauderdale, FL. 33301
Office: (954) 745-7697
Email: mlrpa@msn.com

Counsel for Appellant

CERTIFICATE OF COMPLIANCE

I hereby certify that, pursuant to Florida Rule of Appellate Procedure 9.210(a)(2), Appellant's Initial Brief complies with the font requirements of this rule.

/s/ Jared Brown

Jared Brown, Esq.
Florida Bar #30075
Brown Legal PLLC
101 N.E. Third Ave
Lobby Suite 110
Fort Lauderdale, FL 33301
Office: (954) 524-6700
Email: jared@jaredbrownlaw.com

/s/ Martin Roth

Martin Roth, Esq.
Florida Bar #265004
Martin L. Roth, P.A.
1700 East Las Olas Blvd.
Suite 307
Fort Lauderdale, FL. 33301
Office: (954) 745-7697
Email: mlrpa@msn.com

Counsel for Appellant