

IN THE SUPREME COURT OF FLORIDA

PAUL THOMAS KARTSONIS,

Petitioner,

v.

Case No. SC20-1500

STATE OF FLORIDA,

Respondent.

_____ /

ON DISCRETIONARY REVIEW FROM THE
DISTRICT COURT OF APPEAL, FIRST DISTRICT

JURISDICTIONAL BRIEF OF RESPONDENT

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PRELIMINARY STATEMENT

The petitioner, PAUL THOMAS KARTSONIS, the appellant in the First District Court of Appeal and the defendant in the trial court, is referred to as the petitioner or by his proper name. The respondent, the State of Florida, the prosecuting authority, is referred to as the respondent or the State.

The jurisdictional brief prepared by the petitioner is referred to by "PJB." That symbol is followed by the page number.

STATEMENT OF THE ISSUES

If review is granted, the State intends to raise no affirmative issues on cross-review that are independent of those on which jurisdiction is invoked and independent of those raised by Petitioner in his statement of the issues.

STATEMENT OF THE CASE AND FACTS

The statement prepared by Petitioner improperly and repeatedly includes highly-selective references to matters not contained within the four corners of the lower court's opinion, a practice the Court has described as "pointless and misleading." Reaves v. State, 485 So. 2d 829, 830 n.3 (Fla. 1986). The principle is well-settled that for purposes of resolving the existence of discretionary jurisdiction, the Court is "confined to consider only those facts contained within the district court's majority opinion." Wells v. State, 132 So. 3d 1110, 1111 (Fla. 2014). The State for this reason cannot accept Petitioner's statement and requests that it be rejected.

The relevant history and facts are set forth in the opinion of the lower court, attached in the appendix (hereafter "A."). The opinion was published in the Southern Reporter, 3d Series, at 302 So. 3d 508 (Fla. 1st DCA 2020).

ARGUMENT

ISSUE: PETITIONER DID NOT SUSTAIN HIS BURDEN OF SHOWING THAT A LAWFUL, PROPER BASIS EXISTS FOR THE SUPREME COURT'S EXERCISE OF ITS DISCRETIONARY JURISDICTION. (RESTATED)

Jurisdiction

The jurisdiction of the Supreme Court of Florida is governed by Article V of the state's Constitution and "extends only to the narrow class of cases enumerated" in that provision. Wells v. State, 132 So. 3d 1110, 1112 (Fla. 2014)(citations omitted). The Court's jurisdiction is limited to this "narrow class of cases" because:

[the] Supreme Court ... 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.

Jenkins v. State, 385 So. 2d 1356, 1357-58 (Fla. 1980). It follows that jurisdiction is "a threshold matter that must be addressed" before the merits are reached. In re Holder, 945 So. 2d 1130, 1134 (Fla. 2006) (citations omitted).

To exercise conflict jurisdiction, an "express and direct" conflict is required to appear "within the four corners of the majority decision." Reaves v. State, 485 So. 2d 829, 830 (Fla. 1986); *see*

Jenkins, 385 So. 2d at 1359. “Inherent” or “implied” conflict, in other words, cannot serve as a basis for the Court’s jurisdiction. Dep’t of Health and Rehab. Servs. v. Nat’l Adoption Counseling Serv., Inc., 498 So. 2d 888, 889 (Fla. 1986)(citation omitted).

Discussion

Petitioner is seeking to invoke the Supreme Court’s jurisdiction pursuant to Article V, section 3(b). He contends that an exercise of jurisdiction is appropriate because, he believes, the decision of the First District conflicts with the decision in Gay v. State, 898 So. 2d 1203 (Fla. 2d DCA 2005). PJB. at 5-6, 8. His argument continues by claiming that the First District’s decision affected a class of constitutional or state officers, namely “judges.” Id. at 9. The State disagrees with both assertions.

THE DECISION OF THE FIRST DISTRICT DOES NOT CONFLICT WITH THE SECOND DISTRICT’S DECISION IN GAY

Nothing in the instant decision expressly and directly conflicts with the decision in Gay. To the contrary, the decisions addressed different questions. The defendant in Gay pursued a motion for correction of illegal sentence pursuant to rule 3.800(a). 898 So. 2d at 1204. His motion was granted by a judge who did not impose the

original sentence, but nonetheless proceeded on granting the motion to resentence the defendant. Id. The defendant appealed the sentence, arguing that the judge who imposed the original sentence should have resentedenced him. Id.

The Second District reversed the sentence, but its decision, contrary to the argument by Petitioner, did not “stand for the proposition” that the original judge was required to “hear *any* subsequent sentencing matters.” PJB. at 6 (emphasis supplied). That is, the decision did not address the resolution by a different judge of the underlying rule 3.800(a) motion. Instead, the Second District explained that in previous decisions:

[t]his court has held that “[w]ithout a showing of necessity, it is error to permit the *resentencing* by a different judge than the one who heard the evidence at trial and originally imposed sentence.”

Id. (citing Fla. R. Crim. P. 3.700(c))(further citations omitted)(emphasis supplied). Finding nothing in the record to establish that “it was necessary for another judge” to resentence the defendant, the Second District remanded the case for the defendant to be resentedenced by the original judge. 898 So. 2d at 1204.

The successor judge in Kartsonis, in contrast, did not impose

sentence. The First District opened its analysis by quoting the relevant language in rule 3.700:

In any case, other than a capital case, *in which it is necessary that sentence be pronounced* by a judge other than the judge who presided at trial or accepted the plea, the sentencing judge shall not pass sentence until the judge becomes acquainted with all that transpired at the trial, or the facts, including any plea discussions, concerning the plea and the offense.

Kartsonis, 302 So. 3d at 508 (quoting Fla. R. Crim. P. 3.700(c)(1)) (emphasis in Kartsonis). Finding that rule 3.700(c) “on its face ... is applicable only when a sentence is pronounced,” the district court in Kartsonis concluded:

The rule that a judge other than the original presiding trial judge should not pronounce a sentence absent necessity applies only in the context of a trial judge exercising discretion to determine and impose an appropriate sentence. Where there is no discretionary resentencing, [rule 3.700(c)] does not impact a trial court’s resolution of post-conviction matters just because they address or relate to underlying sentencing issues.

302 So. 3d at 508 (internal citation omitted). Thus, because the relief requested by Petitioner in the underlying rule 3.800(b)(2) motion was denied, rule 3.700(c) was not applicable because it was not “necessary that sentence be pronounced.” Fla. R. Crim. P. 3.700(c).

No conflict arises if two decisions involve controlling factual

elements that are different. Kyle v. Kyle, 139 So. 2d 885, 887 (Fla. 1962); see Ackers v. State, 614 So. 2d 494, 495 (Fla. 1993). Further, the holding announced in the instant decision, that the necessity requirement in rule 3.700(c) is applicable “only when a sentence is pronounced,” is readily reconciled with the Second District’s holding that, rule 3.800(a) relief having been granted, the original judge was required to resentence a defendant. 302 So. 3d at 508.

The existence of an “apparent conflict,” if *arguendo* apparent conflict furnishes a proper ground to invoke the Supreme Court’s jurisdiction, was likewise not established.¹ The concept of apparent conflict is described in a law review article as:

arising when a district court opinion only seems to be in conflict, even though there may be some reasonable way to reconcile it with the case law.

Harry Lee Anstead, Gerald Kogan, Thomas D. Hall & Robert Craig Waters, *The Operation and Jurisdiction of the Supreme Court of Florida*, 29 Nova L. Rev. 431, 520 (2005); see Public Health Tr. of Dade County

¹ The exercise of jurisdiction on grounds of “apparent conflict” appears, with respect, to be contrary to Article V, section 3(b)(3), which requires express and direct conflict.

v. Menendez, 584 So. 2d 567, 569 (Fla. 1991)(finding apparent conflict if an opinion can reasonably be read to conflict with another appellate opinion).

Here, the instant decision cannot be reasonably read to conflict with the decision in Gay. The two decisions involve different factual elements, are precisely stated, and contain no ambiguity implying a broader holding. See Department of Revenue v. Johnston, 442 So. 2d 950 (Fla. 1983); cf. D'Oleo-Valdez v. State, 531 So. 2d 1347 (Fla. 1988). The instant opinion expressly distinguished the controlling factual element in the decisions, providing:

Where there is no discretionary resentencing, [rule 3.700(c)] does not impact a trial court's resolution of post-conviction matters just because they address or relate to underlying sentencing issues. This distinguishes *Gay v. State* ... the primary case relied on by Appellant, because the defendant in *Gay* was resentenced by a different judge. In this case, Appellant's motion was denied and a new sentence was not pronounced.

Kartsonis, 302 So. 3d at 508. The "relation" of the decisions to one another is apparent on reading the Kartsonis opinion; therefore, the "harmoniz[ation]" of the decisions is not necessary or appropriate. Anstead, *supra* page 7, at 520.

**THE FIRST DISTRICT’S DECISION DID NOT EXPRESSLY
AFFECT A CLASS OF STATE OR CONSTITUTIONAL
OFFICERS**

Petitioner did not establish that the instant decision *expressly* affected a class of state or constitutional officers, namely “judges.” To be subject to discretionary review on this ground, a decision is required to satisfy a “very restrictive” test; the decision must:

directly and, in some way, *exclusively* affect the duties, powers, validity, formation, termination[,] or regulation of a particular class of constitutional or state officers.

Anstead, *supra* page 7, at 507 (quoting Spradley v. State, 293 So. 2d 697, 701 (Fla. 1974))(emphasis in original). The decision is further required to “expressly” affect the class of officers, a provision that “plainly requires a written opinion [to explain] the impact of the decision on the officers in question.” Philip J. Padovano, Florida Appellate Practice § 3:9 (2019 ed.); see Art. V, § 3(b)(3), Fla. Const.

The Court in Spradley wrote:

[a] decision which “affects a class of constitutional or state officers” must be one which does more than simply modify or construe or add to the case law which comprises much of the substantive and procedural law of this state.

293 So. 2d at 701.

Here, in applying the plain language of rule 3.700(c), the First

District did nothing more than merely “construe or add to the case law which comprises much of [Florida’s] substantive and procedural law.”

Id. The decision did not expressly and directly affect, let alone discuss its effect on, the duties and powers of a particular class of officers, the state’s judges. Like “nearly all” appellate decisions, the decision imposed an obligation “to follow the law as stated therein,” but this without more is insufficient to invoke the Court’s jurisdiction. Id.

CONCLUSION

Because Petitioner did not establish a conflict or otherwise advance a lawful basis for the exercise of jurisdiction, the State respectfully requests that this Honorable Court decline jurisdiction.

CERTIFICATE OF SERVICE

I certify that the foregoing was furnished to the following through the Court's e-Filing Portal on February 15, 2021: Michael Ufferman, Esq., at ufferman@uffermanlaw.com.

CERTIFICATE OF COMPLIANCE

I certify that the foregoing was prepared in Bookman Old Style 14-point font and contains 1800 words, therefore satisfying the provisions of rule 9.045, Florida Rules of Appellate Procedure.

Respectfully submitted and certified,

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