

IN THE

**SUPREME COURT OF FLORIDA**

---

PAUL THOMAS KARTSONIS,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

---

Case No. SC20-1500

Lower Tribunal No(s): 1D19-1172  
2018-CF-5375

**AMENDED JURISDICTIONAL BRIEF OF THE PETITIONER**

MICHAEL UFFERMAN  
Michael Ufferman Law Firm, P.A.  
2022-1 Raymond Diehl Road  
Tallahassee, Florida 32308  
(850) 386-2345/fax (850) 224-2340  
FL Bar No. 114227  
Email: [ufferman@uffermanlaw.com](mailto:ufferman@uffermanlaw.com)

Counsel for Petitioner **KARTSONIS**

RECEIVED, 12/22/2020 12:52:27 PM, Clerk, Supreme Court

**A. TABLE OF CONTENTS**

	Page
A. TABLE OF CONTENTS.....	ii
B. TABLE OF CITATIONS.....	iii
1. Cases .....	iii
2. Statutes.....	iii
3. Other Authority .....	iii
C. STATEMENT OF THE CASE AND STATEMENT OF THE FACTS ...	1
D. JURISDICTIONAL STATEMENT AND SUMMARY OF ARGUMENT .	4
E. ARGUMENT AND CITATIONS OF AUTHORITY .....	5
1. The First District’s decision below conflicts with decisions of other district courts regarding whether it is error for a successor judge to rule on a Florida Rule of Criminal Procedure 3.800(b) motion if the original sentencing judge is still available to preside over the rule 3.800(b) proceeding .....	5
2. The First District’s decision below expressly affects a class of constitutional or state officers (i.e., judges) .....	9
F. CONCLUSION .....	10
G. CERTIFICATE OF SERVICE .....	11
H. CERTIFICATE OF COMPLIANCE .....	12

## B. TABLE OF CITATIONS

	Page
<b>1. Cases</b>	
<i>D’Oleo-Valdez v. State</i> , 531 So. 2d 1347 (Fla. 1988) . . . . .	6-7
<i>D’Oleo-Valdez v. State</i> , 516 So. 2d 1125 (Fla. 3d DCA 1987) . . . . .	7
<i>F.G. v. Agency for Persons with Disabilities</i> , 940 So. 2d 1095 (Fla. 2006) . . . . .	9
<i>Gay v. State</i> , 898 So. 2d 1203 (Fla. 2d DCA 2005) . . . . .	1, 3, 5-6, 8
<i>Graydon v. State</i> , 502 So. 2d 25 (Fla. 4th DCA 1987) . . . . .	7
<i>Kartsonis v. State</i> , 302 So. 3d 508 (Fla. 1st DCA 2020) . . . . .	2-3
<i>Lawley v. State</i> , 377 So. 2d 824 (Fla. 1st DCA 1979) . . . . .	3
<i>Persaud v. State</i> , 821 So. 2d 411 (Fla. 2d DCA 2002) . . . . .	6
<b>2. Statutes</b>	
§ 921.0026(2)(d), Fla. Stat. . . . .	1
<b>3. Other Authority</b>	
Art. V, § 3(b)(3), Fla. Const. . . . .	4, 7
Fla. R. App. P. 9.030(a)(2)(A)(iii) . . . . .	4
Fla. R. App. P. 9.030(a)(2)(A)(iv) . . . . .	4
Fla. R. App. P. 9.210(a)(2) . . . . .	12
Fla. R. Crim. P. 3.700(c) . . . . .	3, 6

Fla. R. Crim. P. 3.700(c)(1) ..... 3, 5, 8-9

Fla. R. Crim. P. 3.800(a). ..... 5

Fla. R. Crim. P. 3.800(b) ..... *passim*

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 (2005) ..... 7

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

The issue in this case is whether it is error for a successor judge to rule on a Florida Rule of Criminal Procedure 3.800(b) motion if the original sentencing judge is still available to preside over the rule 3.800(b) proceeding. As explained below, the First District's decision below is in conflict with – or at least is in apparent conflict with – *Gay v. State*, 898 So. 2d 1203 (Fla. 2d DCA 2005).

Paul Thomas Kartsonis (hereinafter “Petitioner Kartsonis”) entered an open plea to burglary, stalking, and possession of burglary tools. At the time of the offenses, Petitioner Kartsonis was thirty-one years old, and the record establishes that he suffers from “Asperger’s Syndrome,” which is part of the autism spectrum disorder. Prior to the sentencing hearing, defense counsel filed a packet entitled “Mitigation Materials” that contained numerous doctors’ evaluations, a report relating to one of Petitioner Kartsonis’ prior suicide attempts, mitigation letters, and a letter stating that Petitioner Kartsonis had been accepted into the Embrace Mental Health Inpatient Recovery Center. During the sentencing hearing, defense counsel requested a downward departure sentence pursuant to section 921.0026(2)(d), Florida Statutes (i.e., “The defendant requires specialized treatment for a mental disorder that is unrelated to substance abuse or addiction or for a physical disability, and the defendant is amenable to treatment.”). At the sentencing hearing, it was established

that, absent applying a recognized ground for departure, the lowest permissible sentence on the Criminal Punishment Code sentencing scoresheet was 4.225 years' imprisonment (50.7 months). Notably, the scoresheet demonstrates that Petitioner Kartsonis has *no criminal history*. However, after hearing testimony and argument, the trial court (the Honorable Steven B. Whittington) rejected defense counsel's request for a downward departure sentence and the trial court imposed a sentence of 6 years' imprisonment followed by 25 years of probation (with an ankle monitor).

Following the sentencing hearing in this case (and while the case was on direct appeal), Petitioner Kartsonis filed a rule 3.800(b) motion raising a sentencing error relating to the trial court's consideration of Petitioner Kartsonis' request for a downward departure sentence. However, the rule 3.800(b) motion was subsequently denied by the Honorable Tatiana R. Salvador – even though the Judge Whittington – the judge who presided over Petitioner Kartsonis' sentencing hearing – was available to consider and rule on the motion.<sup>1</sup> On appeal, Petitioner Kartsonis argued that it was error for a successor judge to rule on Petitioner Kartsonis' rule 3.800(b) motion. The First District rejected this claim, stating:

Appellant claims it was error for a successor judge to rule on and deny his rule 3.800(b) motion because the original sentencing judge was

---

<sup>1</sup> When Petitioner Kartsonis filed the rule 3.800(b) motion, Judge Whittington was a sitting circuit judge in the Fourth Judicial Circuit (and he still holds that position today).

still available. Florida Rule of Criminal Procedure 3.700(c)(1) provides:

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 what transpired at the trial, or the facts, including any plea discussions, concerning the plea and the offense.

(emphasis added).

Appellant suggests this rule should apply to all sentencing related matters. However, on its face, rule 3.700(c) is applicable only when a sentence is pronounced. *See generally Lawley v. State*, 377 So. 2d 824 (Fla. 1st DCA 1979). 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. *Id.* at 825. Where there is no discretionary resentencing, the rule does not impact a trial court's resolution of post-conviction matters just because they address or relate to underlying sentencing issues.

*Kartsonis v. State*, 302 So. 3d 508, 508 (Fla. 1st DCA 2020) (footnote omitted). As explained below, Petitioner Kartsonis submits that the First District's decision in this case is in conflict with the Second District's decision in *Gay* regarding whether it is error for a successor judge to rule on a rule 3.800(b) motion if the original sentencing judge is still available to preside over the rule 3.800(b) proceeding. Petitioner Kartsonis further submits that the First District's decision in this case affects a class of constitutional or state officers (i.e., judges).

#### **D. JURISDICTIONAL STATEMENT**

The Court has discretionary jurisdiction to review a decision of a district court of appeal that expressly and directly conflicts with a decision of other district courts of appeal on the same point of law. *See* art. V, § 3(b)(3), Fla. Const.; Fla. R. App. P. 9.030(a)(2)(A)(iv). The Court also has discretionary jurisdiction to review a decision of a district court of appeal that expressly affects a class of constitutional or state officers. *See* art. V, § 3(b)(3), Fla. Const.; Fla. R. App. P. 9.030(a)(2)(A)(iii).

## E. ARGUMENT AND CITATIONS OF AUTHORITY

**1. The First District’s decision below conflicts with decisions of other district courts regarding whether it is error for a successor judge to rule on a Florida Rule of Criminal Procedure 3.800(b) motion if the original sentencing judge is still available to preside over the rule 3.800(b) proceeding.**

In its decision in this case, the First District held that it is *not* error for a successor judge to rule on a Florida Rule of Criminal Procedure 3.800(b) motion even if the original sentencing judge is still available to preside over the rule 3.800(b) proceeding. As explained below, the First District’s decision conflicts with decisions of other district courts on this important point of law.

In support of this argument that the original sentencing judge should have presided over his rule 3.800(b) motion, Petitioner Kartsonis relies on Florida Rule of Criminal Procedure 3.700(c)(1). Rule 3.700(c)(1) states:

**Noncapital Cases.** 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 what transpired at the trial, or the facts, including any plea discussions, concerning the plea and the offense.

(Emphasis added).

In *Gay v. State*, 898 So. 2d 1203 (Fla. 2d DCA 2005), the Second District applied rule 3.700(c)(1) in a case where a judge – who did not preside over the original sentencing hearing – imposed the sentence at a subsequent resentencing

hearing after the defendant's Florida Rule of Criminal Procedure 3.800(a) motion was granted. The Second District held:

The record reflects no explanation for the substitution of judges during the resentencing proceedings, and the State concedes that the substitutions constitute error. This court has held that “[w]ithout a showing of necessity, it is error to permit resentencing by a different judge than the one who heard the evidence at trial and originally imposed sentence.” *Persaud v. State*, 821 So. 2d 411, 414 (Fla. 2d DCA 2002); *see also* Fla. R. Crim. P. 3.700(c).

The State acknowledges that the judge who originally sentenced Gay, Judge Downey, is still available as a circuit judge in Pinellas County, and nothing in the record establishes that it was necessary for other judges to resentence Gay. Accordingly, we reverse and remand for resentencing by the original trial judge unless the State can show that resentencing by a different judge is necessary pursuant to rule 3.700(c) and the cited cases.

*Gay*, 898 So. 2d at 1204 (some citations omitted). *Gay* stands for the proposition that the judge who presided over a sentencing hearing should hear any subsequent sentencing matters – absent “exigent or unusual circumstances.” Pursuant to *Gay*, because there is nothing in the record establishing that the original sentencing judge was unavailable to consider and rule upon Petitioner Kartsonis’ rule 3.800(b) motion, it was error for a successor judge to rule on the motion.

Petitioner Kartsonis submits that the First District’s decision below is in conflict with *Gay* regarding whether it is error for a successor judge to rule on a rule 3.800(b) motion if the original sentencing judge is still available to preside over the rule 3.800(b) proceeding. At the very least, there is “apparent conflict” in this area

of the law. *See D'Oleo-Valdez v. State*, 531 So. 2d 1347, 1348 (Fla. 1988) (“We have accepted jurisdiction to review *D'Oleo-Valdez v. State*, 516 So. 2d 1125 (Fla. 3d DCA 1987), because of apparent conflict with *Graydon v. State*, 502 So. 2d 25 (Fla. 4th DCA 1987). Art. V, § 3(b)(3), Fla. Const.”). As explained by the distinguished authors in “The Operation and Jurisdiction of the Supreme Court of Florida,” it is necessary for the Court to resolve “apparent conflicts” so as to ensure uniformity in Florida law:

Another category is “apparent conflict,” arising when a district court opinion only seems to be in conflict, even though there actually may be some reasonable way to reconcile it with the case law. A cramped or overly strict reading of the constitution might suggest that discretion should not be allowed here. However, such an approach would ignore a very real problem. *Until the Supreme Court of Florida harmonizes cases that seem to be in conflict, for all intents and purposes, there is an actual conflict.*

Moreover, it would not appear to be sound policy to deprive the Court of discretion merely because there is some way to harmonize cases without overruling any of them. This amounts to saying that the Court, in conflict cases, can review only if it negates, which will not always be desirable policy. *The authority to review and harmonize decisions when appropriate would appear to be a legitimate and effective means for the Court to address the issue of uniformity of the law.* The Supreme Court of Florida should not be forced either to decline jurisdiction or overrule essentially sound decisional law whose relation to other cases is simply uncertain.

In any event, review of “apparent conflict” cases is now a well established feature of the Court’s jurisdiction, and it may or may not result in the overruling of precedent from a Florida appellate court.

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, 520-521 (2005) (emphasis added). The First District’s conclusion that it is *not* error for a successor judge to rule on a rule 3.800(b) motion even if the original sentencing judge is still available to preside over the rule 3.800(b) proceeding – when compared to the decision of the Second District in *Gay* – creates, at a minimum, an “apparent conflict.”

The Court should exercise its discretion to hear this important matter, as the question in this case has the potential to impact all criminal cases in Florida. The necessity requirement of rule 3.700(c)(1) establishes that the judge who is most familiar with the case must preside over sentencing proceedings. This reasoning applies with equal, if not greater, force to rule 3.800(b) proceedings – proceedings that (1) focus solely on sentencing matters and (2) are presented shortly after the original sentencing hearing while the case is pending on direct appeal.

Petitioner Kartsonis requests the Court to accept jurisdiction in this case and thereafter decide whether the interests of judicial economy, fairness, and uniformity throughout the state are best served by a policy that requires the judge who presided over a sentencing hearing to thereafter consider and rule on any rule 3.800(b) motions – unless that judge is no longer available. Rule 3.700(c)(1) clearly applies to the “judge who accepted the plea.” In turn, that rule must apply, *a fortiori*, to a judge

who not only “accepted the plea,” but presided over a complex sentencing hearing. Moreover, it is common knowledge that professional courtesy and judicial deference to a fellow jurist make it exceedingly unlikely a successor judge will be willing to alter the sentencing discretion exercised by the original judge. These realities further mandate application of rule 3.700(c)(1) to rule 3.800(b) proceedings if defendants are to be afforded due process and fundamental fairness.

Accordingly, for the reasons set forth above, Petitioner Kartsonis prays the Court to grant review and thereafter resolve the conflict concerning successor judges and rule 3.800(b) motions. Petitioner Kartsonis urges the Court to exercise its discretion to hear this important matter.

**2. The First District’s decision below expressly affects a class of constitutional or state officers (i.e., judges).**

The decision below also expressly affects a class of constitutional or state officers (i.e., judges). *See, e.g., F.G. v. Agency for Persons with Disabilities*, 940 So. 2d 1095, 1096 (Fla. 2006) (“We have jurisdiction because that decision affects a class of constitutional or state officers – circuit judges.”). Guidance from this Court is needed as to the assignment procedure that applies when a rule 3.800(b) motion is filed.

## **F. CONCLUSION**

For the reasons set forth above, Petitioner Kartsonis requests the Court to accept jurisdiction in this case.

## G. CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the foregoing instrument has been furnished to:

Assistant Attorney General Julian E. Markham  
PL-01, The Capitol  
Tallahassee, Florida 32399-1050  
Email: [criminalappealsintake@myfloridalegal.com](mailto:criminalappealsintake@myfloridalegal.com)

by email delivery this 22nd day of December, 2020.

Respectfully submitted,

/s/ Michael Ufferman

---

MICHAEL UFFERMAN  
Michael Ufferman Law Firm, P.A.  
2022-1 Raymond Diehl Road  
Tallahassee, Florida 32308  
(850) 386-2345/fax (850) 224-2340  
FL Bar No. 114227  
Email: [ufferman@uffermanlaw.com](mailto:ufferman@uffermanlaw.com)

Counsel for Petitioner **KARTSONIS**

## H. CERTIFICATE OF COMPLIANCE

Undersigned counsel hereby certifies pursuant to Florida Rule of Appellate Procedure 9.210(a)(2) that the Amended Jurisdictional Brief of the Petitioner complies with the type-font limitation.

/s/ Michael Ufferman

MICHAEL UFFERMAN

Michael Ufferman Law Firm, P.A.

2022-1 Raymond Diehl Road

Tallahassee, Florida 32308

(850) 386-2345/fax (850) 224-2340

FL Bar No. 114227

Email:ufferman@uffermanlaw.com

Counsel for Petitioner **KARTSONIS**