

ORIGINAL

IN THE SUPREME COURT OF FLORIDA

RONALD COTE,

Petitioner

vs.

Case No. SC00-1327  
DCA NO. 2D98-4438

STATE OF FLORIDA,

Respondent

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DISCRETIONARY REVIEW OF DECISION OF THE  
DISTRICT COURT OF APPEAL OF FLORIDA  
SECOND DISTRICT

BRIEF OF RESPONDENT ON JURISDICTION

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CERTIFICATE OF TYPE SIZE AND STYLE

This brief is presented in 12 point Courier New type.

STATEMENT OF THE CASE AND FACTS

Appellee accepts Appellant's Statement of the Case and Facts for the purposes of this appeal.

SUMMARY OF THE ARGUMENT

Appellant has failed to show express and direct conflict between the Second and Fifth District Courts of Appeal.

ARGUMENT

NO CONFLICT HAS BEEN SHOWN BETWEEN THE  
INSTANT OPINION AND ANY OTHER DISTRICT COURT  
OF APPEAL. (RESTATED)

Appellant suggests that a conflict exists between the Second and Fifth District Courts of Appeal. He contends that Cote v. State, 25 Fla. L. Weekly D676 (Fla. 2d DCA Mar 17, 2000) conflicts with the 5<sup>th</sup> District Court's opinion in N.T v. State, 682 So. 2d 688 (Fla. 5<sup>th</sup> DCA 1996). The State would suggest that the opinions identified by Appellant do not expressly and directly conflict, and that there is no need for this Court to exercise its discretionary powers of review.

In Cote v. State, the juvenile defendant was prosecuted in adult court for Burglary of a Dwelling with Assault or Battery, and he was tried as an adult although he was seventeen at the time he committed the offense. Juvenile court jurisdiction was therefore waived. The felony court properly elected to impose juvenile sanctions but did not relinquish jurisdiction to the juvenile court. Due to a clerical error, the sentencing documents erroneously indicated that Appellant's sentence had been entered in the juvenile division and further reflected that Appellant had entered a plea to a juvenile petition rather than to a felony information in the felony division. When Appellant subsequently was arrested for committing a new law violation, he was

erroneously brought before the juvenile court judge, where a sentence was imposed. Later, once the error was discovered, Appellant was brought before the felony court, and over Appellant's double jeopardy objection, he was sentenced in adult court for violating the terms of the previously imposed sentence. The felony court determined that the sentence previously imposed by the juvenile court was a nullity because the juvenile court did not have, and never did have, jurisdiction to impose sentence.

The issue in Cote v. State, therefore, was whether or not a juvenile under these unique facts could properly have been sentenced in juvenile court, whether the juvenile court had jurisdiction to impose a sentence, and whether that jurisdiction was void, or merely voidable.

None of these issues were addressed in N.T. v. State. Instead, the issue in N.T. was much more narrow- whether a juvenile court, having imposed a sentence for a substantive offense, could also impose a sentence for contempt of court arising from the same facts. The court in N.T. held that to do so would violate the constitutional prohibition against double jeopardy. While it is true that both cases address the issue of double jeopardy, the added component of whether the juvenile court had jurisdiction to impose sentence is the factor which exposes the flaw in Appellant's argument that there is express



and direct conflict between these two cases. N.T. addressed only the question of whether or not double jeopardy had been violated by the same court imposing sentence for the same facts. Cote might have addressed a similar double jeopardy argument, but it was unnecessary to reach this question because the 2<sup>nd</sup> DCA agreed with the felony court's ruling that the juvenile court had no jurisdiction to impose sentence. Consequently, Cote does not conflict with N.T. because the unique factual scenario found in Cote required a different analysis, and a different resolution of the issue presented.

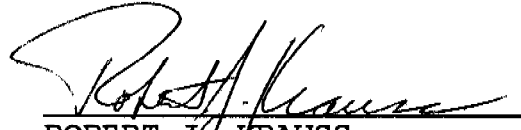
Before this Court may properly conclude that it has jurisdiction to consider the merits of this case, it must determine that there is express and direct conflict between the decisions cited by Appellant. The issues considered by these two cases do not exhibit the required express and direct conflict. It would therefore be proper for this Court to deny Appellant the relief he seeks.

CONCLUSION

WHEREFORE based on the foregoing arguments, citations of authority and references to the record, this Court should decline to exercise its jurisdiction.

Respectfully Submitted

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to Richard P. Albertine, Public Defender's Office, Polk County Courthouse, P.O. Box 9000- Drawer PD, Bartow, Florida 33831 this 5<sup>th</sup> day of July, 2000.



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OF COUNSEL FOR RESPONDENT