

IN THE SUPREME COURT FOR THE STATE OF FLORIDA

ORIGINAL

JOHN ELLSWORTH,

Petitioner,

Case No: SC 00-190

vs.

2d DCA Case No: 99-00828

POLK COUNTY BOARD OF
COUNTY COMMISSIONERS,

Respondent.

FILED
DEBBIE CAUSSEAU

MAR 16 2000

CLERK, SUPREME COURT

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ANSWER BRIEF ON JURISDICTION

ON APPEAL FROM THE OFFICE OF THE
SECOND DISTRICT COURT OF APPEAL

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TABLE OF CONTENTS

CERTIFICATE OF COMPLIANCE ii

TABLE OF AUTHORITIES iii

STATEMENT OF THE CASE AND OF THE FACTS 1

SUMMARY OF ARGUMENT 1

ARGUMENT 2

WHETHER THE OPINION BELOW EXPRESSLY AND DIRECTLY
CONFLICTS WITH OPINIONS OF THIS COURT AND OTHER
DISTRICT COURTS OF APPEAL. 2

CONCLUSION 4

CERTIFICATE OF SERVICE 4

CERTIFICATE OF COMPLIANCE

This brief is typed in 14 point proportionately spaced Times New Roman.

TABLE OF AUTHORITIES

CASES

Adams v. Wellington Reg'l Med. Ctr. 727 So.2d 1139 (Fla. 4th DCA 1999)	3
Ansin v. Thurston 101 So.2d 808 (Fla. 1958)	2
Jollie v. State 405 So.2d 418 (Fla. 1981)	2, 3
Joshua v. City of Gainesville 734 So.2d 1285 (Fla. 1 st DCA) review granted 735 So.2d 1285 (Fla. 1999)	3
Milano v. Moldmaster, Inc. 703 So.2d 1093 (Fla. 4th DCA 1997)	3

RULES

§ 9.120(d) and 9.210(c), Fla. R. App. P.	1
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CONSTITUTIONS

Article V Section 3(b), <u>Fla. Const.</u> (1999)	2
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STATEMENT OF THE CASE AND OF THE FACTS

Although the Petitioner John Ellsworth's Statement of Facts contains a number of facts that are irrelevant to the issue currently on appeal, the Respondent Polk County Board of County Commissioners chooses to omit this portion of this section pursuant to Florida Rules of Appellate Procedure 9.120(d) and 9.210(c).

SUMMARY OF ARGUMENT

Petitioner correctly argues that there are limited circumstances in which a "citation PCA" decision may be reviewable by the Florida Supreme Court, including decisions which cite a case that is pending before the Supreme Court. However, discretionary jurisdiction entails only a judicial power to review a case, and not an obligation to do so. This case does not meet the high threshold for express and direct conflict. Petitioner show no practical need for resolution by this Court.

ARGUMENT

WHETHER THE OPINION BELOW EXPRESSLY AND DIRECTLY CONFLICTS WITH OPINIONS OF THIS COURT AND OTHER DISTRICT COURTS OF APPEAL.

Respondent will not burden this Court with a lengthy discussion of the high standard Petitioner must meet to be entitled to come before the highest Court of this state, seeking exercise of its discretionary jurisdiction to resolve conflicts in the state's jurisprudence. "Express" and "direct" conflict is required by the Florida Constitution. Article V Section 3(b), Fla. Const. (1999). A "real and embarrassing conflict" is required. Ansin v. Thurston, 101 So.2d 808, 811 (Fla. 1958).

In Jollie v. State, 405 So.2d 418, 420 (Fla. 1981), this Court concluded "that a district court of appeal per curiam opinion which cites as controlling authority a decision that is either pending review in or has been reversed by this Court continues to constitute prima facie express conflict and allows this Court to exercise its jurisdiction." The Jollie Court distinguished these circumstances from the mere citation PCA decisions rendered in the traditional form, which remained nonreviewable by the Supreme Court. See id. at 421.

Although Respondent questions whether there is "express" and "direct" conflict under the Florida Constitution when the PCA decision cites a case that is

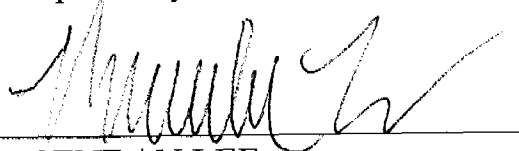
pending before the Supreme Court due a certified question,¹ the Jollie case provides that discretionary jurisdiction is permissible in such instances. However, merely because this Court has the judicial power to exercise its discretionary jurisdiction does not mandate discretionary review. This case does not meet the high threshold for express and direct conflict. Petitioner show no practical need for resolution by this Court.

¹ The issue at hand is pending before this Court based on a certified question. See Joshua v. City of Gainesville, 734 So.2d 1285 (Fla. 1st DCA), review granted 735 So.2d 1285 (Fla. 1999). The Joshua decision does not conflict in any way with decisions of other courts which have addressed the issue. See, e.g., Adams v. Wellington Reg'l Med. Ctr., 727 So.2d 1139 (Fla. 4th DCA 1999); Milano v. Moldmaster, Inc., 703 So.2d 1093 (Fla. 4th DCA 1997). Respondent asserts that such circumstances should not fall under this Court's conflict jurisdiction, and that the district courts could preserve a party's interests by re-certifying the question to the Florida Supreme Court.

CONCLUSION

Discretionary review should be denied.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished, by U.S. Mail, to Merette L. Oweis, DiCesare, Davidson & Barker, P.A., Post Office Box 7160, Lakeland, FL 33807-7160, this 14th day of March, 2000.


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