ORIGINAL

IN THE SUPREME COURT OF FLORIDA

EDWARD PRITCH WALSH,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

CASE NO. SC00-622

JURISDICTIONAL BRIEF OF RESPONDENT

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PRELIMINARY STATEMENT

Respondent, the State of Florida, the Appellee in the District Court of Appeal (DCA) and the prosecuting authority in the trial court, will be referenced in this brief as Respondent, the prosecution, or the State. Petitioner, EDWARD PRITCH WALSH, the Appellant in the DCA and the defendant in the trial court, will be referenced in this brief as Petitioner or proper name.

"PJB" will designate Petitioner's Jurisdictional Brief. That symbol is followed by the appropriate page number.

The opinion of the district court below is attached as Appendix A, and the opinion in Walker v. State, 479 So.2d 274 (Fla. 2d DCA 1985), is attached as Appendix B.

A bold typeface will be used to add emphasis. Italics appeared in original quotations, unless otherwise indicated.

CERTIFICATE OF FONT AND TYPE SIZE

Counsel certifies that this brief was typed using Courier New 12.

STATEMENT OF THE CASE AND FACTS

The State rejects the Petitioner's statement of case and facts because it improperly relies on the record on appeal before the district court. Reaves v. State, 485 So.2d 829 (Fla. 1986). The pertinent history and facts are set out in the decision of the lower tribunal, attached in slip opinion form. It also can be found at 25 Fla. L. Weekly D499 (Fla. 1st DCA February 21, 2000). The relevant facts are as follows:

> [Petitioner] suffered from bipolar disorder, required medication to treat the disorder, became angry and erratic when he was not taking his prescribed medication, and may not have been taking his medication on the night the offenses were committed. However, no evidence was presented indicating that, because of his mental disorder, the appellant did not understand the nature and consequences of his actions, nor was evidence presented that, because of his mental disorder, the appellant did not know that his actions were wrong, even if he understood their nature and consequences.

Walsh, 25 Fla. L. Weekly at D499.

SUMMARY OF ARGUMENT

Petitioner has improperly relied upon the record in the trial court. The appropriate focus upon the operative facts, as contained within the "four corners" of the DCA's decision, reveals no direct and express conflict with the ruling of the Second District in Walker v. State, 479 So.2d 274 (Fla. 2d DCA 1985). In Walker, the court stated that defense experts are not required to give an opinion regarding the ultimate issue of sanity in order to shift the burden to the State to prove that the defendant was sane. In the district court decision below, the court ruled that failure to provide evidence of one of the essential elements of an insanity defense is insufficient to shift the burden to the State to prove that the defendant was sane. These rulings do not conflict.

Even if the two decisions did in fact conflict, the conflict has already been resolved in favor of the decision below by decisions of this Court, which were cited by the district court below. To the extent that Walker stands for the proposition cited by Petitioner, it has been overruled by these supreme court cases.

ARGUMENT

IS THERE EXPRESS AND DIRECT CONFLICT BETWEEN THE DECISION BELOW AND WALKER V. STATE, 479 So.2d 274 (Fla. 2d DCA 1985)? (Restated)

Jurisdictional Criteria

Petitioner contends that this Court has jurisdiction pursuant to Fla. R. App. P. 9.030(a)(2)(A)(iv), which parallels Article V, § 3(b)(3), Fla. Const. The constitution provides:

> The supreme court ... [m]ay review any decision of a district court of appeal ... that expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law.

The conflict between decisions "must be express and direct" and "must appear within the four corners of the majority decision." Reaves, supra, at 830. Accord Dept. of Health and Rehabilitative Services v. Nat'l Adoption Counseling Service, Inc., 498 So.2d 888, 889 (Fla. 1986)(rejected "inherent" or "implied" conflict; dismissed petition). Neither the record, nor a concurring opinion, nor a dissenting opinion can be used to establish jurisdiction. Reaves, supra; Jenkins v. State, 385 So.2d 1356, 1359 (Fla. 1980)("regardless of whether they are accompanied by a dissenting or concurring opinion"). In addition, it is the "conflict of *decisions*, not conflict of *opinions* or *reasons* that supplies jurisdiction for review by certiorari." Jenkins, 385 So. 2d at 1359.

In Ansin v. Thurston, 101 So. 2d 808, 810 (Fla. 1958), this Court explained:

> It was never intended that the district courts of appeal should be intermediate courts. The revision and modernization of the Florida judicial system at the appellate level was prompted by the great volume of cases reaching the Supreme Court and the consequent delay in the administration of justice. The new article embodies throughout its terms the idea of a Supreme Court which 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.

Accordingly, the determination of conflict jurisdiction distills to whether the District Court's decision reached a result opposite Walker v. State, 479 So.2d 274 (Fla. 2d DCA 1985).

1. The decision below is not in "express and direct" conflict with Walker.

In Walker, the trial court had refused a defense-requested instruction on the burden of proof for an insanity defense, and gave only Standard Jury Instructions 3.04(b) and 2.03. Id. at 275. Subsequent to the trial court decision, this Court decided Yohn v. State, 476 So.2d 123 (Fla. 1985). According to the Walker court, Yohn held that "Standard Jury Instructions (Criminal) 3.04(b) and 2.03 do not adequately instruct on the state's ultimate burden to prove that the defendant was sane at the time of the offense, once there was sufficient evidence presented to rebut the presumption of sanity." Walker at 276. The State agrees with that statement of law. The court then recounted the evidence which created reasonable doubt to rebut the presumption of the defendant's sanity. This evidence consisted of lay witness testimony that the

defendant had been hospitalized for treatment of mental illness and had exhibited irrational, paranoid behavior, and expert testimony. Id. The expert testimony consisted of various diagnoses of mental illness, but the court specifically stated that "none of [the experts] were able to state unequivocally that the defendant **was insane** at the time of the offenses." Nonetheless, without further analysis, the court concluded that "[c]learly, the trial produced sufficient evidence to raise a reasonable doubt about the defendant's sanity" and vacated the conviction. Id.

In the instant case, the evidence indicated the following:

> [Petitioner] suffered from bipolar disorder, required medication to treat the disorder, became angry and erratic when he was not taking his prescribed medication, and may not have been taking his medication on the night the offenses were committed. However, no evidence was presented indicating that, because of his mental disorder, the appellant did not understand the nature and consequences of his actions, nor was evidence presented that, because of his mental disorder, the appellant did not know that his actions were wrong, even if he understood their nature and consequences.

Walsh, 25 Fla. L. Weekly at D499. The court held that "without such evidence, the presumption of [Petitioner's] sanity at the time of the offense was not rebutted, the state was not required to prove beyond a reasonable doubt that the appellant was legally sane at the time of the offenses, and no jury instruction on the insanity defense was required to be given." Id. at D499-500. The court cited several cases to support this holding, including this Court's decisions in Hall v. State, 568 So.2d 882 (Fla. 1990) and Chestnut v. State, 538 So.2d 280 (Fla. 1989).

A person is considered to be insane when 1) he had a mental infirmity, disease or defect, and 2) because of this condition he did not know what he was doing or its consequences, or, although he knew what he was doing and its consequences, he did not know it was wrong. Florida Standard Jury Instructions (Crim.) 3.04(b). In the instant case, the district court held that without evidence of the second element of insanity set out above, a defendant is not entitled to a jury instruction on the insanity defense. In contrast, the Walker court held that the defendant was entitled to an insanity defense instruction even though the defense experts did not testify to the **ultimate conclusion** of the defendant's sanity. These holdings are not inconsistent: Walker did **not** hold that the evidence failed to produce facts showing one of the essential elements of an insanity defense, only that the expert witnesses did not testify to the ultimate conclusion that the defendant was insane.

Petitioner claims that the district court held below that "evidence of severe mental health problems and bizarre behavior at the time of the offense is insufficient to raise a reasonable doubt as to defendant's sanity **unless also accompanied by opinion evidence that the defendant was insane**" (PJB 7). The State submits that this was not the district court's holding, and suggests that Petitioner has tailored this language to create an appearance of conflict with Walker. Again, the district court below held that the evidence was not sufficient to show one of the essential elements of an insanity defense and did not address whether there

was opinion testimony regarding the ultimate question of the defendant's sanity. The district court's statement that the evidence was insufficient "contrary to our sister court's holding in [Walker]" was an extraneous expression regarding an inapplicable case. In fact, the two cases do not directly conflict, and this Court should not exercise its discretionary jurisdiction.

2. If Walker does conflict with the district court opinion, the conflict was resolved by decisions of this Court.

Petitioner essentially contends that Walker stands for the proposition that the evidence need not show that a defendant did not understand the nature and consequences of his actions, or that, because of his mental disorder, the defendant did not know that his actions were wrong, even if he understood their nature and consequences, in order to raise a reasonable doubt regarding his sanity. If the Walker court had made this ruling, it would be in direct and express conflict with the ruling below. However, if Walker did make such a ruling, then it has been overruled by decisions of this Court long before the decision in the instant case. As such, Walker cannot be used to invoke this Court's discretionary conflict jurisdiction.

Chestnut v. State, 538 So.2d 280 (Fla. 1989), ruled that evidence of an abnormal mental condition not constituting legal insanity is inadmissible to prove lack of intent. More directly, Hall v. State, 568 So.2d 882 (Fla. 1990), held that "expert testimony that a defendant suffered from a mental infirmity, disease, or defect without concluding that, as a result, the defendant could not distinguish right from wrong is irrelevant."

Id. at 885. This ruling is directly contrary to the proposition for which Petitioner claims that Walker stands, and directly supports the decision below. Evidence of mental illness without evidence that the defendant could not distinguish right from wrong is not sufficient to raise reasonable doubt. If in fact Walker holds that such evidence is sufficient to raise reasonable doubt, it was overruled by Chestnut and Hall.

Walker has never been cited for the purported rule that Petitioner claims is in conflict with the district court decision below, in the Second District or anywhere else.[1] In contrast, the ruling in Hall stated above has been applied in other cases. For instance, in Crockham v. State, 723 So.2d 355 (Fla. 4th DCA 1998), the defendant suffered from bipolar disorder, but the evidence showed that at the time of the offense she knew and was able to distinguish between right and wrong, and was able to understand the act she committed was wrong. Id. at 356. Citing Hall, the court ruled that with such evidence, the burden did not shift to the State to prove that the defendant was sane. Id.

The decision of the district court below to mention Walker in its opinion and contrast it to its ruling was not meant to indicate

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[1]. Prior to the instant case, Walker has only been cited in conjunction with Yohn, supra, for the general rule stated in Yohn that once the accused introduces evidence sufficient to present a reasonable doubt of sanity, the presumption of sanity vanishes and the accused's sanity must be proven beyond a reasonable doubt by the state. See State v. McMahon, 485 So.2d 884, 886 (Fla. 2d DCA 1986); Lentz v. State, 498 So.2d 986 (Fla. 1st DCA 1986); Fisher v. State, 506 So.2d 1052, 1054 (Fla. 2d DCA 1987); Miller v. State, 532 So.2d 1290, 1292 (Fla. 4th DCA 1988); and Crockham v. State, 723 So.2d 355, 356 (Fla. 4th DCA 1998).

direct and express conflict with another district. The district court did not certify conflict with the Second District, and its passing reference to Walker was not the basis of its opinion. A closer reading of Walker shows that it is not in direct conflict with the decision below, and if it is, then Walker has been overruled by this Court. This Court should therefore decline to exercise its discretionary conflict jurisdiction here.

CONCLUSION

Based on the foregoing reason, the State urges this Honorable Court to decline to exercise jurisdiction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing JURISDICTIONAL BRIEF OF RESPONDENT has been furnished by U.S. Mail to W. C. McClain, Esq., Assistant Public Defender, Leon County Courthouse, Suite 401, 301 South Monroe Street, Tallahassee, Florida 32301, this 14th day of April, 2000.

Thomas D. Winokur
Attorney for the State of Florida

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