

I.N THE SUPREME COURT OF FLORIDA

CASE NO. SC00-724

FILED
DEBBIE CAUSSEAU
✓ APR 14 2000
CLERK, SUPREME COURT
BY _____ *M*

DOUGLAS ISOM,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

* * * * *

ON PETITION FOR DISCRETIONARY REVIEW
FROM THE THIRD DISTRICT COURT OF APPEAL

* * * * *

RESPONDENT'S BRIEF ON JURISDICTION

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INTRODUCTION

The Respondent, the State of Florida, was the appellee in the Third District Court of Appeal and the prosecution in the trial court of the Eleventh Judicial Circuit, in and for Dade County. The Petitioner was the appellant and the defendant, respectively in the lower courts. In this brief, the parties will be referred to as they appear before this Honorable Court.

The symbol "A" refers to the Appendix attached to this jurisdictional brief, which includes a conformed copy of the district court's opinion. Unless otherwise indicated, all emphasis has been supplied by Respondent.

CERTIFICATE OF TYPE SIZE AND STYLE

Counsel for the Respondent, the State of Florida, hereby certifies that 12 point Courier New is used in this brief.

STATEMENT OF THE CASE AND FACTS

Respondent cannot accept Petitioner's Statement of the Case and Facts appearing on page 4 of his jurisdictional brief due to its argumentative nature and sets forth the following statement of the case and facts pertinent to the jurisdictional issue before this Court:

Petitioner was convicted of trafficking, and conspiracy to traffic, in cocaine and sentenced as a habitual offender to life imprisonment. On direct appeal, Petitioner's convictions were affirmed but the habitual offender sentence was reversed and the cause remanded for resentencing. *Isorn v. State*, 619 So. 2d 369 (Fla. 3d DCA 1993). On remand, the successor judge reimposed a life sentence on Petitioner as a habitual offender, and entered a written departure order. On appeal, the district court of appeal affirmed without written opinion. *See Isom v. State*, 690 So. 2d 613 (Fla. 1997).

Petitioner thereafter filed motions for postconviction relief under Florida Rules of Criminal Procedure 3.800(a) and 3.850, the denial of which was appealed to the Third District. The district court held on rehearing that: (1) any scoresheet error in calculating the recommended sentencing guidelines range was harmless, where Petitioner received a life sentence as a habitual offender at two sentencing hearings and committed ten prior felonies during an escalating pattern of criminal conduct, and (2)

Petitioner's sentence was the law of the case barring the argument that the trial court failed to find that a sentence as an habitual offender was necessary to protect the public. (A 1-6). *Isom v. State*, 750 So. 2d 734 (Fla. 3d DCA 2000). Thereafter, Petitioner filed a motion for rehearing and/or clarification and a suggestion of a certification of conflict to this Court, both of which were denied. (A 7).

Petitioner's notice to invoke the discretionary jurisdiction of this Court was thereafter filed.

SUMMARY OF THE ARGUMENT

Respondent respectfully requests this Court, in its discretion, to decline to accept jurisdiction in this case. Petitioner has failed to demonstrate that the decision of the Third District Court of Appeal expressly and directly conflicts with a decision of this Court or of another district court of appeal on the same question of law, or that it falls under any of the subdivisions provided in Fla. R. App. P. 9.030(a)(2), or Art. V, Section 3(b)(3), Fla. Const. (1980). Express and direct conflict simply does not appear within the four corners of the Third District's decision.

ARGUMENT

THIS COURT SHOULD DECLINE DISCRETIONARY JURISDICTION IN THIS CAUSE SINCE THE DECISION BELOW DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH DECISIONS OF THIS COURT OR THE DECISIONS OF ANY DISTRICT COURT OF APPEAL ON THE SAME QUESTION OF LAW.

Petitioner seeks review through conflict jurisdiction pursuant to Article V, Section 3(b)(3), Fla. Const. (1980) and Fla. R. App. P. 9.030(a)(2)(A)(iv), which provides that the discretionary jurisdiction of the Supreme Court may be sought to review a decision of a district court of appeal which expressly and directly conflicts with a decision of another district court of appeal or of the Supreme Court on the same cruestion of law. Respondent respectfully requests this Honorable Court to decline to accept jurisdiction in this case, since Petitioner presents no legitimate basis for the invocation of this Court's discretionary jurisdiction.

Petitioner's allegation that the district court's decision below expressly and directly conflicts with decisions of this Court and of certain district courts of appeal is without merit. The Third District's opinion sub *judice* did not even refer to the cases cited by Petitioner, let alone expressly and directly create conflict with this Court or another district court of appeal on the same question of law. Moreover, it is well established that inherent or "implied" conflict cannot serve **as** a basis for the

discretionary jurisdiction of this Court. *Department of Health & Rehabilitative Services v. National Adoption Counseling Service, Inc.*, 498 So. 2d 888, 889 (Fla. 1986).

In any event, contrary to Petitioner's contention, the Third District did not rule that Petitioner's habitual offender adjudication could not be raised in a rule 3.800(a) or 3.850 postconviction motion, so as to conflict with any decision of this Court or a district court of appeal. (AB 1-6). Similarly, the Third District's holding that any scoresheet error was harmless under the circumstances presented in Petitioner's case did not directly conflict with any decision rendered by this Court or a district court. Rather, the Third District's finding of harmlessness was consistent with this Court's fairly recent decisions in *State v. Mackey*, 719 So. 2d 284 (Fla. 1998), and *State v. Rubin*, 721 So. 2d 716 (Fla. 1998).

Accordingly, since Petitioner has not shown any express and direct conflict within the four corners of the district court's opinion, this Court's jurisdiction has not been established. *Jenkins v. State*, 385 So. 2d 1356, 1359 (Fla. 1980); *Reaves v. State*, 485 So. 2d 829 (Fla. 1986).

CONCLUSION


Wherefore, based upon the foregoing argument and authorities cited herein, Respondent respectfully requests that this Honorable Court DECLINE to accept discretionary jurisdiction in this cause.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Respondent's Brief on Jurisdiction was furnished by U.S. Mail to Douglas Isom, DC#051320, Santa Rosa Correctional Institution, 5850 E. Milton Road, Milton, FL 32583, on this 12th day of April, 2000.



DOUGLAS J. GLAID
Assistant Attorney General