ORIGINAL

IN THE SUPREME COURT OF FLORIDA

RAYMOND EDWARD BARNES,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

CASE NO. SC02-1413

JURISDICTIONAL BRIEF OF RESPONDENT

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ARGUMENT

ISSUE

ARE THE DECISIONS OF THE DISTRICT COURTS IN EXPRESS AND DIRECT CONFLICT AND SHOULD THIS COURT EXERCISE ITS JURISDICTION? (Restated)

Jurisdictional Criteria

Petitioner contends that this Court has jurisdiction pursuant to Florida Appellate Procedure Rule 9.030(a)(2)(A)(iv), which parallels Article V, § 3(b)(3), of the Florida Constitution. 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.

Art. V, § 3(b)(3), Fla. Const.

The conflict between decisions "must be express and direct" and "must appear within the four corners of the majority decision." Reaves v. State, 485 So. 2d 829, 830 (Fla. 1986). 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 (*quoting* Gibson v. Maloney, 231 So. 2d 823, 824 (Fla. 1970) - emphasis in original).

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.

However, this is a case wherein a *per curiam* decision was reached, citing to State v. Medlin, 273 So. 2d 394 (Fla. 1973) and Reed v. State, 783 So. 2d 1192 (Fla. 1st DCA 2001, rev. granted No. SC01-1238 (Oct. 16, 2002). The State acknowledges that in such circumstances this Court has the discretion to grant jurisdiction under Jollie v. State, 405 So. 2d 418 (Fla. 1981). However, the granting of jurisdiction in this case is not necessary. Jollie, 405 So. 2d at 420.

This Court in Jollie indicated that review in these situations was not necessary and suggested how to resolve these matters:

> [W]e suggest the district courts add an additional sentence in each citation PCA which

> references a controlling contemporaneous or companion case, stating that ***the mandate will be withheld pending final disposition of the petition for review, if any***, filed in the controlling decision. In essence, this will "pair" the citation PCA with the referenced decision in the district court *until it is final without review, **or if review is sought**, until that review is denied or otherwise acted upon by this Court.*

Jollie at 420 [emphasis added]. There is no need for an appeal to the Supreme Court in this case.

It should also be noted that Petitioner's argument on the merits regarding the case of Chicone v. State, 684 So. 2d 736 (Fla. 1996) ignores the fact that the legislature has found that case to decided contrary to legislative intent. See Ch. 2002-258, § 1, Laws of Fla.

The simplest resolution of the instant case is for the District Court to recall, or stay the issuance of the mandate until a decision in Reed, supra, has been rendered. Thus, there is no need to grant jurisdiction in the case *sub judice*.

CONCLUSION

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

SIGNATURE OF ATTORNEY AND CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to KATHLEEN STOVER, Esquire, Assistant Public Defender, Leon County Courthouse, Suite 401, 301 South Monroe Street, Tallahassee, Florida 32301, by MAIL on July 16, 2002.

Respectfully submitted and served,

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[AGO# L02-1-9661]

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the font requirements of Fla. R. App. P. 9.210.

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