IN THE SUPREME COURT OF FLORIDA

ROBERT EARL TIPPENS

Petitioner,

v. Case No. SC02-2514

Fifth DCA Case No. 5D02-286

STATE OF FLORIDA,

Respondent.
_____/

ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

JURISDICTIONAL BRIEF OF RESPONDENT

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STATEMENT OF FACTS

The State submits the following facts relevant to the issue of jurisdiction:

Florida Supreme Court Proceedings:

On November 25, 2002, Petitioner, Robert Earl Tippens, filed a Notice to Invoke Discretionary Jurisdiction in this Honorable Court. In his notice, Tippens alleged that this Court has jurisdiction because the order of the Fifth District Court of Appeal, entered on November 7, 2002, "expressly and directly conflicts with a decision of another district court of appeal and the Supreme Court on the question of law. (Same question of law.)." (Notice 1). The "question of law" is identified as the denial of a motion to supplement the record on appeal "with transcripts of hearing on motion to suppress . . .." *Id.*

On December 16, 2002, this Honorable Court acknowledged receipt on December 9, 2002 of a "Petitioner's Jurisdictional Brief." However, the brief did not comply with the appellate rules and was stricken *sua sponte* by this Court. Tippens was ordered to file an amended brief in compliance with the rules and serve a copy of it on the Attorney General.

On or about December 20, 2002, Tippens served a document entitled "Appellant's Amended Brief to Denial of Supplemental Record and Transcripts of His Suppression Hearing." On January

2, 2003, this Court acknowledged receipt on December 30, 2002 of "Petitioner's Jurisdictional Brief (Original and five copies, with appendix)." However, the appendix did not comply with the appellate rules, and it was stricken by this Court. Tippens was ordered to "immediately file an original and five copies of an Appendix that contains only a conformed copy of the decision of the district court of appeal."

5th DCA Proceedings (Case No. 5D02-286):

Tippens filed an "Appellant's Initial Brief to Denial of Motion to Suppress Confession" in the Fifth District Court of Appeal in "March, 2002." (*See* Case No. 5D02-286, Order, Aug. 2, 2002). The district court ordered the State to serve its answer brief on or before August 30, 2002. *Id*. Thereafter, on August 8, 2002, the Court denied "Appellant's August 4, 2002, Request To Supplement Record." (*See id*., Order, Aug. 8, 2002).

On August 28, 2002, the State served its answer brief. Therein, the State answered the sole claim made by Tippens in his initial brief, to-wit: "Whether trial court erred by denying Appellant's motion to suppress his coered (sic) confession was clothed with presumption of correctness of promises that were made by law enforcement officers from which a conviction was based upon." (IB 4).

Subsequently to the filing of the answer brief, on September

5, 2002, Tippens filed a letter he dated “08-01-02" in this Honorable Court. Therein, he complained that he had received the State’s answer brief “telling me I did not carry my burden to prove that trial court erred in denying my motion to suppress my coered (sic) statement.” He further claimed to have requested a transcript of the hearing, but one “has not been provided.” He asked this Court to order such a transcript for his use in the appeal pending before the 5th DCA.

On October 8, 2002, this Court entered an order transferring the “petition” (apparently the letter dated “08/01/02") to the 5th DCA. In that order, this Court treated the “letter . . . as a petition for a writ of mandamus.”

On October 18, 2002, the 5th DCA ordered the State to “file a response” to the “letter treated by the Supreme Court of Florida as a motion to supplement the record with the transcript of the December 10, 1999 hearing on motion to suppress.” The State served its response on October 25, 2002. Therein, the State contended that Tippens’ petition did not contain the required averments and/or facts upon which relief via the extraordinary writ of mandamus could be had. Moreover, the State contended that supplementation should be denied because the claim, as raised in Tippens’ brief, was facially insufficient and without merit. The State added that if the

court found the claim as alleged by Tippens to be facially sufficient and of potential merit, the supplementation should be granted, as it would be necessary to determine whether an enforceable agreement had been made.

On November 7, 2002, the 5th DCA issued an order denying the motion to supplement the record with the transcript of the hearing on the motion to suppress. The order provided: "Such denial is without prejudice to allege or demonstrate that in entering his pleas Appellant reserved his right to appeal the suppression order as dispositive of the case(s)." Apparently, this is the order which Tippens asks this Court to review.

SUMMARY OF ARGUMENT

This Court should not accept jurisdiction of this case because there is no express and direct conflict with a district court of appeal or with this Honorable Court. Neither has any other basis for jurisdiction been alleged, or established.

ARGUMENT

THIS COURT SHOULD NOT ACCEPT JURISDICTION IN THIS CASE.

In his Notice to Invoke Discretionary Jurisdiction of the Florida Supreme Court, Tippens contends that this Court should accept jurisdiction on the grounds that the order below "expressly and directly conflicts with a decision of another district Court of Appeal and the Supreme Court on the question of law . . .." (Notice 1). In the "jurisdictional" brief, he cites to federal decisions which he apparently believes support his claim. This Court should decline jurisdiction because Tippens has failed to carry his burden to establish that the decision of the Fifth District Court of Appeal in his instant case conflicts with a decision of another district court of appeal or this Honorable Court. Moreover, any alleged conflict with federal case law does not provide a basis for the exercise of this Court's discretionary jurisdiction. *See* Fla. R. App. P. 9.030(a).

This Court has jurisdiction under article V, section (3)(b)(3) of the Florida Constitution where a decision of a district court "expressly and directly conflicts" with a decision of this Court or another district court. Such conflict must be express and direct, that is, "it must appear within the

four corners of the majority decision." *Reaves v. State*, 485 So. 2d 829, 830 (Fla. 1986).

Tippens contends that his "sole claim is that by denying him a fair chance at proving his claim(s) is continuing to restrain him in violation that no person should be sentence (sic) based on a coerce (sic) confession which a (sic) shown to be the case at bar." (Jurisdictional Initial Brief 5). At no time does he identify any conflicting decision.

The order at issue is that dated November 7, 2002, denying Tippens' motion to supplement the record in the absence of allegations and demonstrations that in entering his pleas, he reserved the right to appeal the suppression order as dispositive of the case. He has cited no case holding that a person before an appellate court is entitled to supplement the record with transcripts of proceedings where it has not been established that he reserved his right to appeal the denial of a suppression motion that was dispositive of the case against him. Under such circumstances, Tippens can not meet the *Reeves'* requirement that conflict sufficient to support jurisdiction must appear within the four corners of the decisions at issue. Thus, no basis for the exercise of this Court's discretionary jurisdiction based on conflict, or any other permitted basis, has been presented. *See* Fla. R. App. P. 9.030(a)(2).

Moreover, the State submits that the order at issue is not a decision of the district court of appeal within the meaning of the discretionary jurisdiction rule. *See* Fla. R. App. P. 9.030(a)(2). Certainly, it was not a final order on the subject because the denial was "without prejudice to allege or demonstrate" entitlement to the supplementation. This Honorable Court should decline to exercise discretionary jurisdiction in this case.

CONCLUSION

Based on the foregoing argument and authority, the State respectfully requests that this Court decline to accept jurisdiction of this case.

Respectfully submitted,

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COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing brief on jurisdiction has been furnished by United States Mail to Robert Earl Tippens, Petitioner, at DOC #348928-J-1117-L, Jackson Work-Camp, Malone, FL 32445-3144, on this 7th day of January, 2003.

CERTIFICATE OF COMPLIANCE

The undersigned counsel certifies that this brief was typed using 12 point Courier New, a font that is not proportionately spaced.

_____
JUDY TAYLOR RUSH
COUNSEL FOR RESPONDENT

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APPENDIX

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