

IN THE SUPREME COURT OF FLORIDA

**RICHARD WALKER,**

Petitioner,

v.

**STATE OF FLORIDA,**

Respondent.

**Case No. SC04-0308**

ON DISCRETIONARY REVIEW FROM  
THE FIFTH DISTRICT COURT OF APPEAL

**JURISDICTIONAL BRIEF OF RESPONDENT**

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**STATEMENT OF THE CASE AND FACTS**

Petitioner's motion for postconviction relief filed pursuant to **Fla. R. Crim. P. 3.850** was summarily denied by the trial court. Petitioner appealed the denial to the Fifth District Court of Appeal in Case No. 5D03-3820. On January 27, 2004, the Fifth District Court of Appeal affirmed the summary denial of the postconviction motion is a per curiam affirmance without opinion. The decision may be found at **Walker v. State**, 869 So. 2d 573 (Fla. 5th DCA 2004)(table). It is this decision which Petitioner now seeks to have this Court review.

**SUMMARY OF THE ARGUMENT**

This Court is without jurisdiction to entertain this appeal. The decision of the Fifth District Court of Appeal is a per curiam affirmance without opinion, which is not subject to review by this Court.

**ARGUMENT**

**ISSUE**

**THIS COURT IS WITHOUT JURISDICTION TO ENTERTAIN THE INSTANT APPEAL.**

Art. V. §3(b)(3), Fla. Const. and Fla. R. App. P. 9.030 (2)(A)(iv) provide that this Court has jurisdiction to review a decision of a district court of appeal which announces a rule of law which expressly and directly conflicts with a decision of this Court or another district court of appeal on the same question of law. Jurisdiction founded on "express and direct conflict" does not require that the district court certify or even directly recognize the conflict. The "express and direct" requirement is met if it can be shown that the holding of the district court is in conflict with another district court or the supreme court. See Hardee v. State, 534 So. 2d 706 (Fla. 1988); Ford Motor Co. v. Kikis, 401 So. 2d 1341 (Fla. 1981)(District court's discussion of the legal principles which the court applied supplies a sufficient basis for a petition for conflict review), on remand, 405 So. 2d 1061 (Fla. 5th DCA 1981).

Petitioner is apparently attempting to invoke the jurisdiction of this Court on the basis of express and direct conflict, as he asserts in a one-sentence conclusory fashion on page five of his brief that "[c]ertainly some District Courts of Appeal have dealt with this issue involved here

differently than was done in this case." However, Petitioner then goes on to simply reargue the *merits* of the issues raised in the appeal of the denial of his motion for postconviction relief.

"The jurisdictional brief should be a short, concise statement of the grounds for invoking jurisdiction and the necessary facts. It is not appropriate to argue the merits of the substantive issues involved in the case or discuss any matters not relevant to the threshold jurisdictional issue."

**Fla. R. App. P. 9.120 Committee Notes.** Petitioner's so-called jurisdictional brief flies in the face of this mandate, as it consists entirely and exclusively of reargument of the merits of the issue raised on direct appeal.

Petitioner's position apparently rests upon a misunderstanding of the definition of "express and direct conflict." It is a conflict of decisions, not a conflict of opinions or reasons, that supplies jurisdiction for review by this Court. See Gibson v. Maloney, 231 So. 2d 823, 824 (Fla. 1970).

In Reaves v. State, 485 So. 2d 829, 830 (Fla. 1986), this Court reemphasized its prior holding in Jenkins v. State, 385 So. 2d 1356 (Fla. 1980), that "[c]onflict between decisions must be express and direct, i.e., it must appear within the four corners of the majority decision." There, the majority

of the district court had held an admission by a criminal defendant to be voluntary, and thus admissible for impeachment purposes, even though Miranda rights had been violated. The dissenting judge had reviewed the record and concluded that the statements were involuntary. In deciding whether it had jurisdiction, the supreme court noted that to find a conflict with the prior cited decision, it

would be necessary for us either to accept the dissenter's view of the evidence and his conclusion that the statements were involuntary, or to review the record itself in order to resolve the disagreement in favor of the dissenter. Neither course of action is available under the jurisdiction granted by article V, section 3(b)(3) of the Florida Constitution.

In a footnote, the supreme court offered an important instruction to the petitioner's counsel regarding the preparation of jurisdictional briefs:

The only facts relevant to our decision to accept or reject such petitions are those facts contained within the four corners of the decisions allegedly in conflict . . . . [W]e are not permitted to base our conflict jurisdiction on a review of the record or on facts recited only in dissenting opinions. Thus, it is pointless and misleading to include a comprehensive recitation of facts not appearing in the decision below, with citations to the record . . . .

**Reaves**, 485 So. 2d at 830 n. 3.

Petitioner's so-called jurisdictional brief runs far afoul of **Reaves** in that it contains a plethora of facts drawn



from the record not contained in the four corners of the Fifth District's opinion. Petitioner has merely improperly reargued the merits of the issues raised below and has failed to demonstrate how the decision of the Fifth District Court of Appeal in the instant case expressly and directly conflicts with any decision of this Court or another district court of appeal.

The fact is that when a district court of appeal issues a per curiam affirmance without opinion as the Fifth District did in the instant case, this Court is without jurisdiction to consider the instant appeal. See Stallworth v. Moore, 827 So. 2d 974 (Fla. 2002)(Regardless of how a petition seeking review of a district court decision was styled, the court did not have jurisdiction to review per curiam decisions rendered without opinion. This could not be circumvented simply by filing an extraordinary writ petition). Therefore this Court should decline to accept review.

**CONCLUSION**

WHEREFORE, Respondent moves this Court to deny review of the opinion of the Fifth District Court of Appeal in this case, as it is without jurisdiction to do so.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. mail to Richard Walker, #54504-004, Federal Correctional Complex USP, Post Office Box 1033, Coleman, FL 33521-1033 on this \_\_ day of July, 2004.

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**COUNSEL FOR RESPONDENT**

**CERTIFICATE OF FONT COMPLIANCE**

I HEREBY CERTIFY that the size and style of type used in this brief is 12-point Courier New, in compliance with Fla. R. App. P. 9.210(a)(2).

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**COUNSEL FOR RESPONDENT**