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IN THE SUPREME COURT OF FLORIDA

CASE NO. SC02-258

FILED
THOMAS D. HALL

FEB 18 2002

CLERK, SUPREME COURT
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LEON ADDERLY

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 petitioner in the Third District Court of Appeal seeking a writ of certiorari quashing an order of the Circuit Court and the prosecution in the trial court of the Eleventh Judicial Circuit, in and for Miami-Dade County. The Petitioner was the Respondent in the District Court of Appeal and the Defendant, respectively in the lower courts. In this brief, the parties will be referred to as the State and Defendant respectively.

The symbol "App." refers to Defendant's Appendix attached to his jurisdictional brief, which includes a conformed copy of the District Court of Appeal's Opinion and the Order denying Rehearing and Rehearing En Banc. Unless otherwise indicated, all emphasis has been supplied by the State.

STATEMENT OF THE CASE AND FACTS

The State accepts Defendant's statement of the case and facts appearing in his jurisdictional brief to the extent that it is accurate and non-argumentative. Additional facts which the State seeks to bring to the attention of this Court are contained in the argument portion of this brief.

SUMMARY OF THE ARGUMENT

The State respectfully requests that this Court, in its discretion, 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 Opinion of the Third District's decision. Additionally, the State further notes that jurisdiction is lacking because he is essentially seeking interlocutory review of a ruling that was quashed by the State on a writ of certiorari. The parties are still litigating before the trial court. There is no basis for this Court to rule on petitioner's interlocutory claim now.

ARGUMENT

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

Defendant 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 question of law. The State respectfully requests that this Honorable Court decline to accept jurisdiction in this case, since Defendant presents no legitimate basis for the invocation of this Court's discretionary jurisdiction.

Defendant's argument that the District Court's Opinion below expressly and directly conflicts with the decision of this Court in Lewis v. State, 591 So.2d 922 (Fla. 1991) is simply misplaced. First of all, the Third District's Opinion sub judice expressly cited to the Lewis decision but simply noted that the motive to lie argument that Lewis was based upon did not apply to the factual record in this case. Therefore, the facts in this case were the direct converse of Lewis. Here, the victim made charges against Defendant and then voluntarily told her mother that she had engaged

in prior acts of sex with her boyfriend. In Lewis, the parent had accused the child of having engaged in sex with her boyfriend and the allegations of sex abuse surfaced after the mother had scheduled an examination. Lewis permitted inquiry into the prior sexual conduct of the victim to support the theory that the recent accusations had been fabricated to explain away the ensuing medical examination that had been scheduled. Here, the opposite happened. The victim told her mother about the acts of sex abuse and then told her about her prior sexual conduct with a boyfriend. Under these circumstances, the District Court properly concluded that the motive to lie theory underlying Lewis was simply inapposite.

As such, no express and direct conflict exists for this Court to invoke its discretionary jurisdictional powers. At best, any conflict would have to be implied. In this regard, 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). Accordingly, since Defendant has not demonstrated 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). Accordingly, this Court should decline to exercise jurisdiction herein.

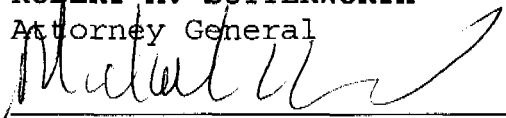
Additionally, the State further submits that jurisdiction should be declined because Petitioner is essentially seeking certiorari review to seek interlocutory appellate review of his case. Certiorari review is narrowly circumscribed to grant the State the right to correct erroneous pretrial rulings that would greatly hamper the State's ability to prosecute its case. State v. Pettis, 520 So.2d 250,254 (Fla. 1988), State v. Gaines, 770 So.2d 1221,1230 n.8 (Fla. 2000). To grant Defendant review now would be an end run around this rule and conflict with an enunciated policy of limited appellate review of interlocutory orders in criminal cases. Review can be declined on this basis as well.


CONCLUSION

WHEREFORE, based upon the foregoing argument and authorities cited herein, the State 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 BENNETT H. BRUMMER, Public Defender, Eleventh Judicial Circuit, 1320 NW 14th Street, Miami, FL., 33125, Attn., Roy A. Heimlich, Esq., on this 15th day of February, 2002.


FRANK J. INGRASSIA
Assistant Attorney General

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that 12 Point Courier New type size was utilized to prepare this Brief and is in compliance with Fla. R. App. P. 9.210.


FRANK J. INGRASSIA
Assistant Attorney General