IN THE SUPREME COURT OF FLORIDA

CASE NO. SC03-166

WILLIAM HALE,

Petitioner,

vs.

THE STATE OF FLORIDA,

Respondent.

ON PETITION FOR DISCRETIONARY REVIEW

BRIEF OF RESPONDENT ON JURISDICTION

CHARLES J. CRIST, JR.
Attorney General
Tallahassee, Florida

RICHARD L. POLIN
Senior Assistant Attorney General
Office of the Attorney General
Department of Legal Affairs
444 Brickell Avenue, Suite 950
Miami, Florida 33131
(305) 377-5441
(305) 377-5655 (fax)

TABLE OF CONTENTS

TABLE OF CITATIONS

STATEMENT OF THE CASE AND FACTS

In an appeal from a jury verdict and final judgment of commitment in a sexually violent predators civil commitment proceeding, the Second District Court of Appeal addressed the claim of the Appellant, William Hale, that the instructions given to the jury were insufficient in light of the opinion of the Supreme Court of the United States, in Kansas v. Crane, 534 U.S. 407 (2002). (Petitioner's Appendix 2). The District Court of Appeal addressed and rejected Hale's claim, as follows:

> . . . In Crane the Court held there must be a finding that the subject has serious difficulty in controlling his or her behavior. Id. at 870.
>
> The trial judge gave, in pertinent part, the following instruction:
>
> > To prove the Respondent, William Charles Hale, is a sexually violent predator, the State must prove each of the following three elements by clear and convincing evidence:
> >
> > 1. William Charles Hale has been convicted of a sexually violent offense.
> >
> > 2. William Charles Hale suffers from a mental abnormality or personality disorder.
> >
> > 3. The mental abnormality or personality disorder makes William Charles Hale likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care[,] and treatment.
> >
> > A "mental abnormality" means mental

> condition affecting a person's emotional or volitional capacity which predisposes the person to commit sexually violent offenses.
>
> "Likely to engage in acts of sexual violence" means a person's propensity to commit acts of sexual violence is of such a degree as to pose a menace to the health and safety of others.

Mr. Hale requested the following instruction, which was refused:

> To prove its case, the State must prove each of the following three elements by clear and convincing evidence:
>
> ....
>
> (b) William Charles Hale suffers from a mental abnormality or personality disorder that makes it difficult[,] if not impossible, for him to control his dangerous behavior and,
>
> ....

We determine that the instruction given was adequate. In effect, the jury in the instant case was instructed that it must consider Mr. Hale's "emotional or volitional capacity which predisposes" him to commit sexually violent offenses. In rejecting a similar argument by Westerheide, the supreme court held: "[W]e do not find that Crane requires a specific jury instruction, but rather that there must be proof of 'serious difficulty in controlling behavior' in order to civilly commit an individual as a sexually violent predator." Westerheide, 27 Fla. L. Weekly at S870.

In Crane the Supreme Court explained that when it

> approved Kansas's sexually violent predator act in Kansas v. Hendricks, 521 U.S. 506, 117 S.Ct. 2072, 138 L.Ed. 2d 501 (1997), it did not give "lack of control" a particularly narrow or technical meaning because inability to control behavior is not demonstrable with mathematical precision. Crane, 122 S.Ct. at 870. The Court further explained that the Constitution's liberty safeguards in the area of mental illness are not best enforced through bright-line rules. The Court in Crane also noted that states retain considerable leeway in defining the mental abnormalities and personality disorders that make an individual eligible for commitment.
>
> Despite this reasoning, in Crane the Court held there must be proof of serious difficulty in controlling behavior. The instruction given in this case encompassed the requirements for civil commitment and contained the definitions for mental abnormality or personality disorder and likely to engage in acts of sexual violence. We conclude the jury was adequately instructed with respect to Hale's volitional capacity to control his behavior.

(Petitioner's Appendix 2-3).

SUMMARY OF ARGUMENT

In Westerheide v. State, 831 So. 2d 93 (Fla. 2002), this Court rejected a claim which asserted that a special jury instruction was required, incorporating the language of Kansas v. Crane, 534 U.S. 407 (2002), as to "serious difficulty in controlling" sexually violent behavior. Although decisions of the First District Court of Appeal, prior to this Court's Westerheide opinion, had come to a contrary conclusion, the decision of the Second District in the instant case, is fully in accordance with this Court's Westerheide opinion. As the lower court herein clearly reached the correct result based on this Court's own recent pronouncement, there is no reason for this Court to exercise discretionary review based upon a conflict with pre-Westerheide opinions which have already been overruled by this Court.

ARGUMENT

THE LOWER COURT'S OPINION IS IN ACCORDANCE WITH THIS COURT'S RECENT RULING IN WESTERHEIDE V. STATE, 831 So. 2d 93 (Fla. 2002), AND THIS COURT SHOULD THEREFORE DECLINE TO ACCEPT THE CASE FOR DISCRETIONARY REVIEW.

In Westerheide v. State, 831 So. 2d 93 (Fla. 2002), this Court rejected an argument that jury instructions, in a sexually violent predators civil commitment case, were inadequate, due to the omission of language regarding "serious difficulty in controlling" sexually violent behavior. Prior to this Court's opinion in Westerheide, the First District Court of Appeal had construed the decision in Kansas v. Crane, 534 U.S. 407 (2002), to require an additional instruction regarding such serious difficulty in controlling behavior.[1]

The Petitioner herein, on the basis of the pre-Westerheide decisions of the First District, is requesting that this Court grant review to resolve the conflict between the decision of the Second District and the pre-Westerheide decisions of the First District. Insofar as the Second District, in the instant case, correctly abided by this Court's

[1] White v. State, 826 So. 2d 1043 (Fla. 1st DCA 2002); Converse v. Department of Children and Families, 823 So. 2d 295 (Fla. 1st DCA 2002). The First District's decision in Hudson v. State, 825 So. 2d 460 (Fla. 1st DCA 2002), discussed the Crane decision, and construed it as adding a new element to the commitment cause of action. The Hudson opinion, however, did not expressly address any jury instruction issue.

decision in Westerheide, and insofar as the First District's pre-Westerheide decisions have effectively been overruled by Westerheide, there is no reason for this Court to accept the instant case for discretionary review.

The Petitioner attempts to circumvent the Westerheide opinion of this Court by arguing that it is a mere plurality opinion with respect to the issue of whether Crane requires additional jury instructions regarding "serious difficulty in controlling" sexually violent behavior. That, however, is an incorrect construction of this Court's Westerheide opinion.

In the Westerheide opinion written by Justice Harding, and joined by Justices Wells and Lewis, it was stated that "we don not find that *Crane* requires specific jury instruction, but rather that there must be proof of 'serious difficulty in controlling behavior' in order to civilly commit an individual as a sexually violent predator." 831 So. 2d at 107. The opinion further noted that the instruction which was given, which is similar to the subsequently approved standard jury instructions for sexually violent predator commitment cases, although not using the phrase "serious difficulty," nevertheless "conveys this meaning," and there was therefore no constitutional infirmity in the instruction. Id. at 108-09.

While three justices dissented on this issue, Justice Quince wrote a separate opinion, concurring in result only. Justice Quince's opinion does not refer to the jury

instruction issue, but specifically found that the evidence was sufficient to establish "serious difficulty controlling behavior." 831 So. 2d at 113. Justice Quince's concurrence expressly disagreed with the three dissenting justices on this sufficiency of evidence issue.

Although Justice Quince's concurrence does not refer to the jury instruction issue, it is inherent in the concurrence that Justice Quince did not find any reversible error with respect to the instructions as given, or with respect to the absence of the phrase "serious difficulty controlling behavior" in the instruction. If a problem had been perceived with the omission of such language, Justice Quince would then have provided the fourth vote for a reversal of the commitment verdict. As Justice Quince concurred in the result of the commitment verdict being upheld, it is clear that no error was found with respect to the instructions as given or the omission of the "serious difficulty" language.

Accordingly, the decision in Westerheide reflects four justices, a majority of the Court, finding that there was no error with respect to the jury instructions and finding that Crane did not require any additional instruction regarding "serious difficulty" controlling behavior.

As the decision of the lower Court in the instant case is consistent with the majority of this Court in Westerheide, there is no reason for this Court to grant

discretionary review. This Court has already addressed the issue, and the Second District's decision abides by this Court's conclusion.

CONCLUSION

Based on the foregoing, this Court should decline to accept jurisdiction in the instant case.

Respectfully submitted,

CHARLES J. CRIST, JR.
Attorney General

RICHARD L. POLIN
Florida Bar No. 0230987
Senior Assistant Attorney General
Office of the Attorney General
Department of Legal Affairs
444 Brickell Avenue, Suite 950
Miami, Florida 33131
(305) 377-5441
(305) 377-5655 (fax)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief of Respondent on Jurisdiction was mailed this ____ day of February, 2003, to DEBORAH K. BRUECKHEIMER, Assistant Public Defender, Office of the Public

Defender, Polk County Courthouse, P. O. Box 9000 - Drawer PD, Bartow, FL 33831.

_____
RICHARD L. POLIN

CERTIFICATE REGARDING FONT SIZE AND TYPE

The undersigned attorney hereby certifies that the foregoing Brief of Respondent on Jurisdiction was typed in Times New Roman, 14-point type.

_____
RICHARD L. POLIN