

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC03-2104

THE STATE OF FLORIDA,

Petitioner,

vs.

ELDRICK WENDALL WOODING,

Respondent.

ON PETITION FOR DISCRETIONARY REVIEW

BRIEF OF PETITIONER ON JURISDICTION

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STATEMENT OF THE CASE AND FACTS

On October 22, 2003, the Third District Court of Appeal, on rehearing, denied the State's motion for rehearing and certified question, and set forth the opinion of the Court, in its entirety:

Denied. See Espindola v. State, Case No. 02-1839, ___ So. 2d ___ Fla. 3d DCA Oct. 22, 2003).

(App. 1-2). The State thereafter sought discretionary review in the instant proceeding. The State has simultaneously sought review in this Court of Espindola. State v. Espindola, SC03-2103.¹

¹ Review in Espindola has been sought in the alternative - discretionary review of the decision of the Third District Court of Appeal, which certified conflict with the decision of another district court of appeal; and mandatory appellate review in this Court, based on the Third District's holding that a state statute was invalid. Insofar as the notice to invoke discretionary review/notice of appeal was filed in the alternative, the undersigned attorney contacted the Office of the Clerk herein, and spoke to Deputy Clerk Debbie Causseaux, who indicated that when the filing of the notice is in the alternative, the Petitioner should await a court order with a briefing schedule - as opposed to filing a brief on the merits within 20 days of the notice of appeal under Rule 9.110(i), Florida Rules of Appellate Procedure. The briefing schedule has not been issued as of yet in Espindola.

SUMMARY OF ARGUMENT

The decision of the lower court cites Espindola v. State, 855 So. 2d 1281 (Fla. 3d DCA 2003), as controlling authority. Since Espindola is pending review in this Court, the lower court's per curiam opinion citing Espindola provides jurisdiction for discretionary review in this Court.

ARGUMENT

THE DECISION OF THE LOWER COURT EXPRESSLY AND DIRECTLY CONFLICTS WITH DECISIONS FROM OTHER DISTRICT COURTS OF APPEAL.

In Espindola v. State, 855 So. 2d 1281 (Fla. 3d DCA 2003), the Third District Court of Appeal held that Florida's Sexual Predators Act was invalid and violated the requirements of procedural due process. The Third District, in Espindola, certified that its decision was in conflict with the decision of the Second District Court of Appeal in Milks v. State, 848 So. 2d 1167 (Fla. 2d DCA 2003).² 855 So. 2d at 1290.

Review of Espindola is pending in this Court. State v. Espindola, SC03-2103. A per curiam opinion of a district court of appeal, which cites as controlling authority, a decision that is currently pending review in the Supreme Court, constitutes prima facie express and direct conflict for jurisdictional purposes in this Court. Jollie v. State, 405 So. 2d 418 (Fla. 1981); State v. Lofton, 534 So. 2d 1148 (Fla. 1988). As Espindola is currently pending review in this Court, and as Espindola involves a certified conflict between two district courts of appeal, the lower court's per curiam opinion citing Espindola as controlling authority provides this Court with the basis for

² The decision of the lower court also conflicts with the decisions of the First and Fourth Districts in Therrien v. State, 2003 WL 22768356 (Fla. 1st DCA 2003), and Reyes v. State, 854 So. 2d 816 (Fla. 4th DCA 2003).

discretionary review based upon an express and direct conflict under Rule 9.030(a)(2)(A)(iv), Florida Rules of Appellate Procedure. This Court therefore has jurisdiction to review the decision of the District Court of Appeal.

Insofar as the outcome of the instant case will be based on Espindola, the State submits that this Court should accept jurisdiction of the instant case but hold it in abeyance pending review and disposition of Espindola.

CONCLUSION

Based on the foregoing, this Court should grant discretionary review in the instant case, but hold the case in abeyance pending review and disposition of State v. Espindola, SC03-2103.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief of Petitioner on Jurisdiction was mailed this ____ day of December, 2003 to JOHN EDDY MORRISON, Assistant Public Defender, Office of the Public Defender, 1320 N.W. 14th Street, Miami, Florida 33125.

RICHARD L. POLIN

CERTIFICATE REGARDING FONT SIZE AND TYPE

The undersigned attorney hereby certifies that the foregoing brief has been typed in Times New Roman, 14-point type.

RICHARD L. POLIN
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