

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Appellee/Petitioner,

vs.

FSC Case No.

DCA Case No. 2D01-5207

ADAM FREE SOUSA,

Appellant/Respondent.

DISCRETIONARY REVIEW OF DECISION OF THE
DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

RESPONDENT'S BRIEF ON JURISDICTION

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STATEMENT OF THE CASE AND FACTS

On August 15, 2003, the Second District Court of Appeal affirmed Respondent's convictions for two counts of attempted murder with a firearm and one count of aggravated assault with a firearm. However, the Second District remanded for Respondent's three consecutive mandatory minimum sentences to be served concurrently. Sousa v. State, 28 Fla. L. Weekly D1909 (Fla. 2d DCA August 15, 2003) (Exhibit 1).

The charges arose out of a shooting spree involving three victims. The victims were shot in rapid succession. Respondent was found guilty as charged. He was sentenced on Count 1, attempted second degree murder to 50 years, with a 25 year minimum mandatory; Count 2, attempted second degree murder, to 50 years, with a 25 year minimum mandatory; and Count 3, aggravated assault, to 5 years, with a 3 year minimum mandatory. The minimum mandatory sentences for the use of a firearm were made pursuant to §775.087. Sousa, supra. However, the Second District opinion remanded for the mandatory minimum portions of the sentences to be served concurrently, not consecutively. The State filed its Notice to Invoke on November 24, 2003.

SUMMARY OF ARGUMENT

This Court has no jurisdiction in the instant case because the Second District's decision does not expressly and directly conflict with this Court's holding in State v. Christian, 692 So.2d 889 (Fla. 1997) as well as the Fourth District's holding in Newton v. State, 603 So.2d 558 (Fla. 4th DCA 1992).

Minimum mandatory sentences under 10-20-Life should not be stacked when the firearm was used in a criminal episode.

ISSUE

THIS COURT DOES NOT HAVE JURISDICTION TO REVIEW THE INSTANT CASE BECAUSE THE SECOND DISTRICT'S DECISION DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH THE DECISIONS FROM THIS COURT AND THE FOURTH DISTRICT.

This Court has authority as the highest Court of the state to resolve legal conflicts created by the district courts of appeal. The Florida Constitution, Article V, Section 3[b]3, authorizes this Court to review a decision of a district court of appeal that expressly or directly conflicts with a decision of this Court or another district court of appeal.

The Petitioner believes that this case is in conflict with this Court's holding in State v. Christian, 692 So.2d 889 (Fla. 1997).

The instant opinion is not in direct conflict with State v. Christian, 692 So.2d 889 (Fla. 1997). State v. Christian, was based on acts that took place in 1994 prior to 10-20-Life being enacted. Since the 10-20-Life statute was enacted, the courts of this state have ruled that Mondesir and its progeny correctly interpreted the law. The opinion in Sousa applied the Mondesir rationale.

In Mondesir, the Third District interpreted the following language in §775.087 (2) (d) : “The court shall impose any term of imprisonment provided for in this subsection consecutively to **any other** term of imprisonment imposed for any other felony offense.” The Third District held the “any other” language in the statute refers only to another separate crime, rather than those involved in a single prosecution. Accordingly, the court in Mondesir remanded the case back to the trial court to sentence the new offenses consecutive to the prior cocaine offense. However, the sentences for the substantive offenses were to be concurrent to each other.

The court in Sousa properly used the analysis in Mondesir that has been affirmed repeatedly since 10-20-Life was enacted. Minimum mandatory sentences under 10-20-Life should not be stacked when the

firearm was used in a criminal episode. See Wilchcombe v. State, 842 So.2d 198 (Fla. 3rd DCA 2003); Accord Green v. State, 845 So.2d 895 (Fla. 3rd DCA 2003); and Cunningham v. State, 838 So.2d 627 (Fla. 5th DCA 2003).

This Court has no jurisdiction in that there is no conflict with the decision from this Court or the Fourth District.

CONCLUSION

In conclusion, the Respondent respectfully requests that this Honorable Court does not accept jurisdiction in the instant case.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Respondent's Brief on Jurisdiction has been furnished to JOHN M. KLAWIKOFSKY, Assistant Attorney General, Concourse Center 4, 3507 East Frontage Road, Suite 200, Tampa, Florida 33607-7013, this ____ day of January, 2004.

CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 14-point Times New Roman, in compliance with Fla. R. App. P. 9.210 (a) (2).

Respectfully submitted,

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