SUPREME COURT, STATE OF FLORIDA

DEMELLO BOLWARE,

Appellant,

vs.

CASE NO.: SC04-12
DCA CASE NO.: 1D02-4016

STATE OF FLORIDA,

Appellee.

Amended Jurisdictional Brief of Appellant

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STATEMENT OF THE CASE AND OF THE FACTS

This proceeding began as a petition for post conviction relief pursuant to Rule of Crim. P. 3.850 seeking to set aside Bolware's plea to a traffic offense. It was undisputed in the county court that Bolware had pled guilty to driving with a suspended or revoked license, that he had appointed counsel, and that counsel had not advised Bolware of possible administrative sanctions. In fact, Bolware's driving privileges were revoked by the Department of Highway Safety and Motor Vehicles for five years as an habitual traffic offender.

The county court denied relief finding that counsel had no duty to advise of administrative sanctions. Bolware appealed and the undersigned was appointed to represent him.

The circuit court reversed, applying the "direct consequence" test of Major v. State, 814 So.2d 424 (Fla. 2002) stating

> [T]his court is inclined to apply common concepts to the relevant terms. "Direct" means immediate or proximate-not remote. "Result" menas consequence. Syllogistically: if you do "A" then "B" must follow.
>
> If an agency is required to take an action (B) when a person enters a plea in court (A) then the administrative act is a direct consequence of that plea, and the failure to so advise renders counsel ineffective for the purpose of Rule 3.850, Florida Rules of Criminal Procedure.

The state sought certiorari review in the First District Court of Appeal. That court granted relief and reinstated the county

court’s original order (Appendix). Bolware now petitions this court for discretionary review of the District Court decision.

SUMMARY OF ARGUMENT

This case comes before the Court as an appeal of the District Court of Appeal's second tier review of a Circuit Court appellate decision regarding plea bargains specifically the advice required of counsel as to administrative consequences to the defendant's driving privileges for the plea bargain to be effective.

The Circuit Court applied the direct consequences test of Major v. State, 814 So.2d 424 (Fla. 2002); but the District Court disagreed with a two to one decision, involving three separate opinions. Each opinion acknowledges the existence of Fourth District Court cases, particularly Prianti v. State, 819 So.2d 231 (Fla. 4th DCA 2002); holding contrary to the First District's present decision. An examination of both the opinion below and the Fourth District Court of Appeal's opinion in Prianti clearly reveal the conflict.

In reversing, when the Circuit Court was clearly obliged to follow the holding of Prianti, the District Court vastly expanded its second tier jurisdiction, also conflicting with Allstate Ins. Co. v. Kaklamanos, 843 So.2d 885 (Fla. 2003). If the District Court opinion is allowed to stand, the only departure necessary for second tier review is disagreement with the District Court's ultimate disposition.

Both the jurisdictional issue and the substantive issue have far reaching consequences. If the Circuit Court's are to have a

meaningful appellate jurisdiction, some deference to them must continue to be shown. Furthermore, administrative consequences for pleas to driving offenses are virtually universal. A suggestion that counsel need not explain these will effectively deny the right to counsel in literally thousands of cases.

This Court should take jurisdiction of this cause, and resolve the conflicts created by the First District Court of Appeal.

ARGUMENT

The District Court of Appeal opinion expressly and directly conflicts with decisions of the Fourth District Court of Appeal on the substantive issue, see Daniels v. State, 716 So.2d 827 (Fla. 4th DCA 1998); Whipple v. State, 789 So.2d 1132 (Fla. 4th DCA 2001); Prianti v. State, 819 So.2d 231 (Fla. 4th DCA 2002) and further conflicts with repeated decisions of this court and every District as to the scope and jurisdiction of the District Court in certiorari review of appellate decisions of the Circuit Court, see, for example, Allstate Ins. Co. v. Kaklamanos, 843 So.2d 885 (Fla. 2003).

In doing so the District Court directly affects literally thousands of traffic court cases conducted daily in this state, creates different rules for trial courts and defense counsel in different parts of the state, and diminishes the significance of Circuit Court appellate jurisdiction.

Although the First District denied certification of express conflict with the Fourth District Court of Appeal, it is apparent from the attached opinion that all three judges found such conflict. The primary opinion notes that “we are aware that the Fourth District Court of Appeal has reached a different conclusion”, footnote 2,

slip opinion at 5. The concurring opinion would expressly certify conflict, slip opinion at 7. The dissent could find no jurisdiction to review by certiorari the Circuit Court decision expressly following unequivocable law of another District, slip opinion at 9.

An examination of the opinions in the Fourth District cases also clearly establishes the conflict between decisions. In Daniels, the Fourth District ordered an opportunity to withdraw a plea to possession of cocaine. Counsel had not discussed a mandatory revocation of Daniels' driving privileges as a result of the possession charge. Daniels was cited with approval by this court in Major for its determination that drivers licenses suspensions were a direct consequence of the plea to possession of cocaine. Whipple, another Fourth District case is essentially identical to Daniels. Taken alone these cases might not apply to an administrative suspension of a drivers license based upon repeated traffic offenses. However, the Fourth District, citing Daniels and Whipple, clearly applied their ruling to a situation indistinguishable from the instant case. In Prianti, the trial court summarily denied relief pursuant to Rule 3.850 based upon the unexpected permanent revocation of driving privileges by the Department of Highway Safety and Motor Vehicles. The District Court reversed the denial, clearly holding that failure of trial counsel to advise of the administrative sanctions possible could mandate withdrawal of the guilty plea.

Prianti is absolutely on point, and is irreconcilable with the First District's decision in this case.

There can be no doubt as to the existence of conflict with Prianti.

The importance of this case is also beyond doubt. Every day traffic courts operate in this state. Counsel for defendants in these courts are routinely appointed, indeed required if even a violation of probation would result in incarceration, Alabama v. Shelton, 535 U.S. 654 (2002). Since administrative sanctions are imposed against virtually all traffic offenders, questions as to the scope and requirements of counsel's advice are of general importance.

Furthermore, the District Court of Appeal decision conflicts with cases of this Court regarding the standard of review in certiorari review of Circuit Court appellate decisions. This Court has repeatedly limited second tier review to those situations where the Circuit Court violated clearly established principles of law resulting in a miscarriage of justice, Allstate Ins. Co. v. Kaklamanos, 843 So.2d 885 (Fla. 2003). While the District Court paid lip service to this rule it then concluded that, although the circuit court followed the only directly on point precedent from a District Court of Appeal, it would quash the Circuit Court's decision.

In essence the District Court of Appeal has found a miscarriage of justice based upon its disagreement with the result, not upon violation of clearly established legal principles.

Without arguing the merits, it is clear that the District Court of Appeal opinion relies on cases holding that the criminal courts do not exercise direct jurisdiction over the administrative consequences of the plea. None of the cases cited by that Court seek to apply the "direct consequences" test of Major. If these cases do not create a "clearly established" principle of law, then the Circuit Court could not depart from such.

CONCLUSION

The court should take jurisdiction to resolve the conflict between the First and Fourth Districts created in the appealed decision and the First District's expansion of its certiorari jurisdiction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Jurisdictional Brief of Appellant has been furnished to Rob Wheeler, Assistant Attorney General, Tallahassee, FL 32399 and Dennis A. Beesting, Assistant State Attorney, Post Office Box 1040, Panama City, FL 32402, by U.S. Mail, this 3rd day of February, 2004.

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CERTIFICATE OF TYPEFACE COMPLIANCE

I hereby certify that this brief complies with the font requirements of Florida Rule of Appellate Procedure 9.210.

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Jeffrey P. Whitton