

IN THE SUPREME COURT OF FLORIDA

MATTHEW SCOTT PAUL,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Case No. SC05-1636

ON PETITION FOR REVIEW FROM THE
SECOND DISTRICT COURT OF APPEAL, STATE OF FLORIDA

BRIEF ON JURISDICTION

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TABLE OF CITATIONS

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OTHER AUTHORITIES

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Sections 3 (b)(3) and 3 (b)(4) Florida Constitution
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Fla. R. App. P. 9.210 (a)(2).
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STATEMENT OF THE CASE

The opinion below *per curiam* affirms Petitioner's conviction; and, that opinion is published as Matthew Scott Paul v. State, 908 So.2d 1071 (Fla. 2D04-3346) (Opinion filed June 15, 2005)[Table Opinion]. The Mandate in this case issued on August 31, 2005.

STATEMENT OF THE FACTS

Respondent accepts Petitioner's statement of the facts to the extent that Petitioner has supported his statement by tendering relevant record excerpts in support of his presentation.

SUMMARY OF THE ARGUMENT

In short, it is Petitioner's burden to establish a basis for this Court's jurisdiction; and, in that respect, Petitioner has failed.

ARGUMENT

**WHETHER PETITIONER HAS ESTABLISHED A
JURISDICTIONAL BASIS IN THIS COURT?**

It is Petitioner's obligation to establish a jurisdictional basis for this Court's review. The Second District filed a *per curiam* affirmance; and, in the slip opinion, published the following: "Affirmed. See Hilton v. State, 30 Fla. L. Weekly D453 (Fla. 2dDCA Feb. 16, 2003)." The Hilton decision is reported as Hilton v. State, 901 So.2d 155 (Fla. 2d DCA 2005)

(en banc). In Hilton, the Second District certified the following question as a matter of great public importance: "May a police officer constitutionally conduct a safety inspection stop under Section 316.610 after the officer has observed a cracked windshield, but before the officer has determined the full extent of the crack."

The Hilton case is presently pending before this Court as Hilton v. State, SC05-438. The case is active.

The instant decision does not conflict with Hilton as it is affirmed on the basis of Hilton. Petitioner did not request the Court below to certify as a matter of great public importance the issue before this Court in Hilton. Petitioner did not request the Court below to hold the Mandate in abeyance pending resolution of this Court's determination in Hilton.

This Court's jurisdiction is established by Article V, sections 3(b)(3) and 3(b)(4) of the Florida Constitution. The decision below did not declare a state statute invalid; the decision below does not expressly construe a provision of either the state or federal constitution; the decision below does not expressly affect a class of constitutional officers; the decision below does not expressly and directly conflict with a

decision of another district court of appeal or of this Court on the same question of law; the decision below does not pass on a question certified to be of great public importance; and, the decision below has not been certified by the Second District to be in direct conflict with a decision of another district court of appeal.

In short, it is the responsibility of Petitioner to establish jurisdiction; and, jurisdiction has not been established. The opinion below is a "citation PCA". In other words, the decision cites a controlling precedent.

There is an exception; and, that exception is that this Court may review a citation PCA decision of a district court of appeal if the cited authority is pending before this Court. See, Jollie v. State, 405 So.2d 418 (Fla. 1981) As pointed out by Respondent, Hilton v. State, SC05-438 is active.

Should this Court be inclined to accept jurisdiction, Respondent would urge this Court to hold this case in abeyance pending resolution of Hilton.

CONCLUSION

Respondent respectfully requests that this Honorable Court decline jurisdiction to review this case as Petitioner did not request the district court of appeal to either certify a question as a matter of great public importance and Petitioner did request the district court of appeal to hold its decision in abeyance pending resolution of Hilton.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Timothy J. Ferreri, Assistant Public Defender, P.O. Box 9000-Drawer PD, Bartow, FL 33831 on this 10th day of October, 2005.

CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 12-point Courier New, in compliance with Fla. R. App. P. 9.210(a)(2).

Respectfully submitted,

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