

IN THE SUPREME COURT OF THE STATE OF FLORIDA

DANIEL LOUIS MOORE,

Petitioner,

v.

CASE NO.: SC05-1779

STATE OF FLORIDA,

Respondent.

_____ /

ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

JURISDICTIONAL BRIEF OF RESPONDENT

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Section 394.9135(4), Florida Statutes (2002). 4

STATEMENT OF FACTS

The relevant facts are set forth in the opinion of the district court below:

In 1987 and 1993 Moore was convicted of several counts of gross sexual imposition in the state of Ohio. (Moore acknowledges that these convictions would constitute qualifying offenses under the Jimmy Ryce Act). He was sentenced on these offenses, served his time, and was released.

In 2002, Moore was convicted and sentenced to a term of five years' imprisonment in Florida after entering a no contest plea to the charge of failing to register as a sex offender. Two years later, Moore moved to withdraw his plea, and the motion was granted. His judgment and sentence for failing to register as a sex offender were vacated.

Soon thereafter, the Department of Children and Families (DCF) was notified by the Department of Corrections (DOC) that Moore appeared to be eligible for commitment as a sexually violent predator, as that term is defined by the Jimmy Ryce Act. However, on that same day, DCF informed DOC that since Moore's conviction had been vacated, Moore was no longer eligible for civil commitment under the Jimmy Ryce Act.

One month later, Moore entered a re-negotiated plea of no contest to the charge of failing to register as a sex offender in exchange for a sentence of time-served. On that same day, the Putnam County Jail faxed the clerk's minutes of Moore's plea and sentencing hearing to the Sentence Structure Unit within DOC. Two days later, the Putnam County Jail contacted Release Management, a separate unit within DOC, and requested Moore's release paperwork.

However, Release Management, not yet aware of Moore's re-sentencing, sent the Putnam County Jail a copy of Moore's release paperwork from his earlier vacation of sentence. As a result, Moore was mistakenly released from the Putnam County Jail

because DOC indicated it had no further interest in him.

The next day, Release Management received the paperwork on Moore's re-negotiated plea and re-sentencing, and again notified DCF that Moore appeared to qualify as being a sexually violent predator under the Jimmy Ryce Act. DCF responded by requesting that DOC transport Moore to the Florida Civil Commitment Center for evaluation; however, Moore had already been released. A week later, Putnam County sheriff's deputies took Moore into custody in order to institute Jimmy Ryce Act proceedings against him.

Once in custody, Moore was transferred to the Florida Civil Commitment Center. Two state psychologists recommended that Moore be committed under the Jimmy Ryce Act. Shortly thereafter, DCF recommended that the state attorney file a petition for involuntary commitment pursuant to the Jimmy Ryce Act. The state attorney did so. Upon review of said petition, the trial court issued an order determining that probable cause existed to believe that Moore was subject to commitment as well as a warrant for custodial detention against Moore.

Moore challenged his detention in the trial court by filing a motion to vacate the warrant, a motion to rescind the probable cause order, and a motion for habeas corpus relief. However, after conducting a hearing on the motions, the trial court entered an order denying same.

Moore v. State, 30 Fla. L. Weekly D 2016 (Fla. 5th DCA Aug. 26, 2005).

SUMMARY OF ARGUMENT

The Court does have the discretion to accept jurisdiction of this case. However, should jurisdiction be accepted, this Court should decline review of Petitioner's second point because the decision below is wholly consistent with this Court's holdings in Atkinson v. State, 831 So.2d 172 (Fla. 2002), and Hale v. State, 891 So.2d 517 (Fla. 2004).

ARGUMENT

THIS COUTHIS COURT DOES HAVE THE DISCRETION
TO ACCEPT JURISDICTION OF THIS CASE.

This Court has jurisdiction under article V, section 3(b)(3) of the Florida Constitution where a decision of a district court "expressly and directly conflicts" with a decision of this Court or another district court. This Court has repeatedly held that such conflict must be express and direct, that is, "it must appear within the four corners of the majority decision." Reaves v. State, 485 So.2d 829, 830 (Fla. 1986).

The State acknowledges that this Court has the authority to accept jurisdiction of this case in light of the district court's express disagreement with the interpretation of section 394.9135(4), Florida Statutes, in Gordon v. Regier, 839 So.2d 715 (Fla. 2d DCA 2003).

However, should jurisdiction be accepted, this Court should decline review of Petitioner's second point because the decision below is wholly consistent with this Court's holdings in Atkinson v. State, 831 So.2d 172 (Fla. 2002)(deciding that the Jimmy Ryce Act applies only to persons in lawful custody on or after the effective date of the Act), and Hale v. State, 891 So.2d 517 (Fla. 2004)(deciding that the Jimmy Ryce Act

applies to all persons who are currently incarcerated and who at some point in the past have been convicted of a sexually violent offense). In Hale, this Court explained that there was no language in the Jimmy Ryce Act that limited the application of the Act to violent sex offenders currently incarcerated for sexual offenses. Similarly, there is no language in the Act limiting its application to violent sex offenders in custody on the date of enactment for non-sexual offense, but not to violent sex offenders incarcerated for non-sexual offenses in the future. Thus, the decision of the district court that, “[u]nder the plain language of the Jimmy Ryce Act and Hale, the Jimmy Ryce Act does indeed apply to [Petitioner],” is wholly consistent with this Court’s holdings in Atkinson and Hale.

CONCLUSION

Based on the arguments and authorities presented herein, Respondent respectfully acknowledges that this Court does have the discretion to accept jurisdiction of this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of the foregoing response has been furnished to: John M. Selden, Assistant Public Defender, Office of the Public Defender, Seventh Judicial Circuit, 112 Orange Avenue, Suite A, Daytona Beach, Florida 32114, via the Public Defender's Box at the Fifth District Court of Appeal on October ____, 2005.

CERTIFICATE OF 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).

GENERAL

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