IN THE SUPREME COURT
OF FLORIDA

CASE NO. SC05-2163

DARYL WILLIAMS,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

On Discretionary Review of a Certified Conflict
Decision of the Fourth District Court of Appeal

APPELLANT'S REPLY BRIEF

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THE FOURTH DISTRICT'S MINORITY POSITION SHOULD BE REJECTED, IN FAVOR OF A PROCEDURE THAT PERMITS CORRECTION AT ANY TIME IF THE SENTENCING TRANSCRIPT SUPPORTS A CLAIM THAT THE WRITTEN SENTENCE EXCEEDS THE ORAL PRONOUNCEMENT

The State vigorously argues that Daryl Williams's argument in this case is "simply wrong" (Answer Brief, p. 8), and that this Court should approve the position of the Fourth District Court of Appeal, even though that Court's minority view conflicts with every other District. (*See* Initial Brief, p. 12, citing cases from other Districts). But the State offers no substantial reason that an erroneous written judgment of sentence, which exceeds the oral pronouncement, if established by the record, ought to be tolerated. Correction of this type of error does not require an evidentiary hearing, and does not require the State to locate stale witnesses and evidence. Thus, it fits well within the requirements of Rule 3.800(a), which require that an "illegal sentence" be correctable from the face of the record, and presents no unfair prejudice to the State even though the rule allows applicable claims to be raise "at any time."

Balanced against the unfair prejudice to an inmate forced to remain incarcerated pursuant to an erroneously documented written judgment that exceeds the sentence the trial court announced in open court, despite the

well-established "judicial policy" in Florida that the oral pronouncement prevails where there is a discrepancy (*see* Answer Brief, p. 12), the State's cramped view of the role for Rule 3.800(a) should be rejected; the only reasonable result is that reached by the First, Second, Third and Fifth Districts, which permit an opportunity to substantiate the claim with a transcript, and which grant relief "at any time," if warranted.

The Fourth District's unwillingness to consider these claims in a Rule 3.800(a) Motion should be disapproved. Imagine designing a criminal justice system in which a judge could announce a sentence of imprisonment in open court, causing the defendant to be remanded to the custody of the State, then the judge could, at some later time, impose a different, longer written sentence, providing a copy to the jailer and to defense counsel, but not the defendant. Moreover, imagine a system where the law required no one — not the court, not the State, not the jailer, and not defense counsel — to provide a copy of that written sentence to the prisoner. Then, in such a system, a deadline on discovering and complaining about the error is imposed by the rules, and a prisoner who somehow discovers the error too late to meet that deadline is foreclosed from claiming entitlement to the actual intended sentence as pronounced by the judge in court.

No fair-minded jurist would design such a system, and this Court should not condone that result. Lawyers are warned that "gotcha" tactics are not permitted,[1] but the reality is that our system of having written judgments prepared after a defendant has left the courtroom, without any requirement that those judgments be actually provided to the defendants, constitutes a "gotcha" of serious proportions under the Fourth District's approach, unless the defendant is fortunate enough to be apprised of the discrepancy within the two-year window for filing Rule 3.850 motions.

Administering Rule 3.800(a) motions alleging a discrepancy between the oral pronouncement and written judgment poses no particular hardship on either the judicial system or the State, if the burden remains on the defendant to support the motion, prior to its being denied on the merits, with a copy of the sentencing transcript. We raised that issue in the Initial Brief (as issue IV, p. 6), but the State argues that it "is improperly raised for the first time" in this Court, and "should not now be addressed." (Answer Brief,

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[1] *See generally, Scipio v. State*, ___ So. 2d ___, 31 Fla. L. Weekly S114, 2006 WL 345025 (Fla. Feb. 16, 2006); *Goodrich v. State*, 834 So. 2d 893 (Fla. 3d DCA 2002); *State v. Fraser*, 426 So. 2d 46 (Fla. 5th DCA 1982); *State v. D.C.W.*, 426 So. 2d 970 (Fla. 4th DCA 1982).

p. 7).[2] We disagree. First, it is clear that this Court has discretion to consider the issue. *See Caufield v. Cantele,* 837 So.2d 371, 377 (Fla. 2002) ("once this Court has accepted jurisdiction in order to resolve conflict, we may consider other issues decided by the court below which are properly raised and argued before this Court. *See Savoie v. State,* 422 So. 2d 308 (Fla.1982)"). And although the precise issue was not considered below because of the District Court's view that the claim was not cognizable at all in a Rule 3.800(a) motion, on review in this Court the sub-issue we framed is fairly included within the certified conflict issue, which we subdivided only to make clear what related issues would be presented if the decision below were to be reversed. Thus, if the Court accepts jurisdiction and addresses the issue certified conflict issues presented in this case, despite the fact that Petitioner's personal claim is now moot, we respectfully suggest that all the issues framed in the Initial Brief are fairly presented and should be addressed by the Court.

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[2] The fourth issue was:

> If the portions of the record referenced in the Rule 3.800(a) motion do not exist or cannot be located, but the allegations are not conclusively refuted by the record, what is the proper disposition of the motion?

Initial Brief, p. 6.

One case cited by the State, which was issued after the filing of the Initial Brief, needs to be addressed in this Reply. In *Renaud v. State*, ___ So. 2d ___, 31 Fla. L. Weekly S194, 2006 WL 721775 (Fla. Mar. 23, 2006), the Court dismissed review of a decision of the Fourth District, finding "no actual conflict" with *Fitzpatrick v. State*, 863 So. 2d 462 (Fla. 1st DCA 2004), and *Berthiaume v. State*, 864 So. 2d 1257 (Fla. 5th DCA 2004), two cases in which conflict was also certified in this case. The facts and the exact nature of the claim are not clearly stated either in this Court's *Renaud* opinion or in the brief *per curiam* citation affirmance by the District Court. *See* 901 So. 2d 1032. But assuming that *Renaud* presented the same type of claim at issue here, we submit that the Court's discussion is mere dicta, and therefore not binding precedent in this case, because the Court dismissed the case and the merits of the issue were never reached and decided.

Here, the certified conflict with *Fitzpatrick* and *Berthiaume* appears to pertain to the issue of how to dispose of a Rule 3.800(a) motion that does not either attach the sentencing transcript or point to a transcript in the record, not the double jeopardy issue that was discussed in *Renaud.* So the Court's decision to decline jurisdiction in *Renaud* does not foreclose accepting jurisdiction in this case, and reaching the merits as discussed fully in the Initial Brief. We do note, however, that the distinction drawn in *Renaud* —

whether the written judgment of sentence was prepared on the same day as the oral pronouncement, or afterwards — appears to be artificial. One could as easily say that a defendant starts to serve his or her sentence the moment the sentence is orally pronounced, and that a written judgment of sentence prepared thereafter, and which contains a longer sentence of imprisonment, violates double jeopardy no less than if the written judgment were prepared the following day.

Much of the State's Brief addresses the particular facts in Daryl Williams's case, but in view of our Suggestion of Mootness we urge the Court to consider the issues presented on a broader scale. Either the Rules should be revised to *ensure* that each and every defendant receives a timely copy of the written judgment of sentence, if Rule 3.850 is to be the exclusive remedy for a written sentence that exceeds the oral pronouncement, or this Court should find that Rule 3.800(a) may be utilized, if the sentencing transcript substantiates a defendant's claim.

On a practical note, some prisoners may be forced to make such claims without having a copy of the transcript available to attach to the Motion. We suggest that, given the requirements of Rule 9.141(b)(2)(D), Florida Rules of Appellate Procedure, stating that "other appropriate relief" should be afforded if the record does not show "conclusively" that the

movant is not entitled to relief, numerous unnecessary appellate proceedings could be avoided if trial courts simply denied insufficient motions *without prejudice*, and simultaneously instructed defendants how and where to order a copy of their sentencing transcript. If that were done, some prisoners (like Petitioner), may find that their claims have no merit. But some others would be able to substantiate their allegations, and if so, 3 we can think of no legitimate reason that they should be denied the requested relief.

CONCLUSION

For the foregoing reasons, and those advanced in the Initial Brief and the Suggestion of Mootness, the Court should accept jurisdiction in this case and decide the important and recurring legal issue on which there is certified conflict, and the subsidiary related issues raised in this appeal. The reasoning of the decision below should be disapproved, and trial courts should be instructed that if a Rule 3.800(a) claim alleging that a written sentence exceeds the oral pronouncement cannot be determined conclusively from the court records, a movant should be given an opportunity to obtain the transcript in support of the claim before the motion is denied on the merits.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Reply Brief has been furnished to counsel listed below, by U.S. Mail this 1st day of May, 2006:

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I HEREBY CERTIFY that this Brief complies with Rule 9.210, Fla.R. App.P., and is prepared in Word in Times New Roman 14-point font.

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