

IN THE SUPREME COURT OF FLORIDA

THOMAS C. SUTTON, et.
al.,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

CASE NO. SC06-1000

L.T. CASE NO. 1D05-5922,
1D05-5923, 1D05-5924,
1D05-5925, 1D05-5927,
1D05-5930, 1D05-5931,
1D05-5938, 1D05-5945,
1D05-5947, 1D05-5948

JURISDICTIONAL BRIEF OF RESPONDENT

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PRELIMINARY STATEMENT

Respondent, the State of Florida, the Appellee in the District Court of Appeal (DCA) and the prosecuting authority in the trial court, will be referenced in this brief as Respondent, the prosecution, or the State. Petitioner, THOMAS C. SUTTON, et. al., the Appellant in the DCA and the defendant in the trial court, will be referenced in this brief as Petitioner or proper name. "PJB" will designate Petitioner's Jurisdictional Brief. That symbol is followed by the appropriate page number. Bold typeface will be used to add emphasis. Italics appear in original quotations, unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

The State rejects the Petitioners' statement of the case and facts because it goes outside the four corners of the unpublished orders of the First District Court at issue. In District Court case numbers 1D05-5922, 1D05-5923, 1D05-5924, 1D05-5925, 1D05-5930, 1D05-5938, 1D05-5945, 1D05-5947, 1D05-5948, identical orders were entered, which read in their entirety:

Upon the Court's own motion, the appeal is hereby redesignated as invoking the Court's certiorari jurisdiction. See State v. Frazee, 617 So.2d 350 (Fla. 4th DCA 1993)(reviewing circuit court order on petition for writ of prohibition by petition for writ of certiorari); but see Guzzetta v. Hamrick, 656 So.2d 1327 (Fla. 5th DCA 1995)(reviewing circuit court order denying prohibition by appeal). The Petitioner shall have 20 days from the date of this order within which to file a petition which conforms to the requirements of Florida Rule of Appellate Procedure 9.100. The petition shall be accompanied by an appendix which complies with Florida Rule of Appellate Procedure 9.220.

(Appendix A). In District Court case numbers 1D05-5927 and 1D05-5931, orders substantially similar to that quoted above were entered. (Appendix B).

SUMMARY OF ARGUMENT

The First District Court of Appeal's unpublished orders without table citations cannot provide conflict jurisdiction because they are not "decisions" as contemplated in Article V, Section 3(b)(3), of the Florida Constitution.

ARGUMENT

ISSUE

IS THERE DIRECT AND EXPRESS CONFLICT BETWEEN THE UNPUBLISHED ORDERS OF THE FIRST DISTRICT REDESIGNATING THE PETITIONERS' APPEALS FROM THE CIRCUIT COURT'S DENIAL OF WRIT OF PROHIBITION AS INVOKING THE DISTRICT COURT'S CERTIORARI JURISDICTION? (Restated)

Standard of Review

Article V, Section 3(b)(3), of the Florida Constitution provides the Supreme Court of Florida with jurisdiction to review a decision of a district court which "expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law." Issues presenting a pure question of law are reviewed *de novo*. See Armstrong v. Harris, 773 So.2d 7, 11 (Fla. 2000). Under the *de novo* standard of review, the appellate court pays no deference to the lower court's ruling; rather, the appellate court makes its own determination of the legal issue.

Merits

A. Jurisdictional criteria

Petitioner contends that this Court has jurisdiction pursuant to Article V, Section 3(b)(3), Florida Constitution, which provides:

The supreme court ... [m]ay review any decision of a district court of appeal ... that expressly and directly

conflicts with a decision of another district court of appeal or of the supreme court on the same question of law.

Id.; see Fla. R. App. P. 9.030(a)(2)(A)(iv). The conflict between decisions "must be express and direct" and "must appear within the four corners of the majority decision." Reaves v. State, 485 So.2d 829, 830 (Fla. 1986); accord Dept. of health and Rehabilitative Services v. Nat'l Adoption Counseling Service, Inc., 498 So.2d 888, 889 (Fla. 1986)(rejecting "inherent" or "implied" conflict; dismissed petition). Neither the record, nor a concurring opinion, nor a dissenting opinion can be used to establish jurisdiction. Reaves, supra; Jenkins v. State, 385 So.2d 1356, 1359 (Fla. 1980).

In addition, it is the "conflict of decisions, not conflict of opinions or reasons that supplies jurisdiction for review by certiorari." Jenkins, supra. Also, this Court does not have jurisdiction to review per curiam decisions of the district courts that merely affirm with citations to cases not pending review in this Court. Jollie v. State, 405 So.2d 418 (Fla. 1981); Dodi Publishing Co. v. Editorial America, S.A., 385 So.2d 1369 (Fla. 1980). Further, in Ansin v. Thurston, 101 So.2d 808 (Fla. 1958), this Court explained:

It was never intended that the district courts of appeal should be intermediate courts. The revision and modernization of the Florida judicial system at the appellate level was prompted by the great volume of cases reaching the Supreme Court and the consequent delay in the administration of justice. The new article embodies throughout its terms the idea of a

Supreme Court which functions as a supervisory body in the judicial system for the State, exercising appellate power in certain specified areas essential to the settlement of issues of public importance and the preservation of uniformity of principle and practice, with review by the district courts in most instances being final and absolute.

Id. at 810.

B. There is no express and direct conflict of decisions

The decision of the First District Court of Appeal which Petitioner contends is in conflict with those of the Second District in Housing Authority of the City of Tampa v. Burton, 873 So.2d 356 (Fla. 2d DCA 2004), and those of the Fifth District in Pinfield v. State, 710 So.2d 201 (Fla. 5th DCA 1998) and Guzzetta v. Hamrick, 656 So.2d 1327 (Fla. 5th DCA 1995), are not "decisions" as contemplated in Article V, Section 3(b)(3), Fla. Const., but are routine, unpublished orders with no table citation. (Appendix A; B); Compare e.g. Perez v. Moore, 767 So.2d 1170 (Fla. 2000)(granting review pursuant to Jollie v. State, 405 So.2d 418, 420 (Fla. 1981) and Art. V, § 3(b)(3), Fla. Const., of an unpublished order cited in the Southern Reporter at Perez v. Moore, 746 So.2d 457 (Fla. 3d DCA 1999)(table)). The State respectfully submits that because the April 20, 2006, orders at issue in this cause are not "published" as a table decision, they cannot create direct and express conflict with any decision of any other district court or this Supreme Court.

In Wainwright v. Taylor, 476 So.2d 669 (Fla. 1985), this Court explained: "Our concern in cases based on our conflict jurisdiction is the precedential effect of those decisions which are incorrect and in conflict with the decisions reflecting the correct rule of law." Id. at 670. A routine order of a district court that is not published with table citation is not available for citation in any other case; therefore, such an unavailable, routine order cannot establish precedent, either binding or persuasive. See e.g. Ullah v. State, 679 So.2d 1242, 1243 (Fla. 1st DCA 1996)("Previous motions of this nature have been granted by unpublished order, but we now elect to publish this opinion in an effort to forestall the need for future motions of this kind and to provide counsel for appellee with the guidance and precedent he seeks."). Accordingly, there is no direct and express conflict of *decisions* on which jurisdiction in this Court may lie. Art. V, § 3(b)(3), Fla. Const.; Fla. R. App. P. 9.030(a)(2)(A)(iv); see also Fla. R. App. P. 9.330(a)("When a decision is entered without opinion, and a party believes a written opinion would provide a legitimate basis for supreme court review, the motion [for rehearing or clarification] may include a request that the court issue a written opinion.").

CONCLUSION

Based on the foregoing, the State respectfully requests that this Honorable Court decline to exercise jurisdiction because the unpublished orders of the First District Court of Appeal do not establish direct and express conflict of decisions under Article V, Section 3(b)(3), Florida Constitution.

SIGNATURE OF ATTORNEY AND CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to Michael Ufferman, Esq., 660 East Jefferson St., Tallahassee, FL 32301, by MAIL on June 26, 2006.

Respectfully submitted and served,

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the font requirements of Fla. R. App. P. 9.210.

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APPENDIX

- A Orders of the First District Court of Appeal dated April 20, 2006, entered in case numbers 1D05-5922, 1D05-5923, 1D05-5924, 1D05-5925, 1D05-5930, 1D05-5938, 1D05-5945, 1D05-5947, and 1D05-5948
- B Orders of the First District Court of Appeal dated April 20, 2006, entered in case numbers 1D05-5927 and 1D05-5931