

IN THE
SUPREME COURT OF FLORIDA

THOMAS C. SUTTON, et al.,

Petitioners,

v.

STATE OF FLORIDA,

Respondent.

Case No. SC06-1000

District Court Case Nos. 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 PETITIONERS

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A. TABLE OF CONTENTS

	Page
A. TABLE OF CONTENTS.....	ii
B. TABLE OF CITATIONS.....	iii
1. Cases.....	iii
2. Other Authority.....	iv
C. STATEMENT OF THE CASE AND STATEMENT OF THE FACTS	1
D. SUMMARY OF ARGUMENT	3
E. JURISDICTIONAL STATEMENT	4
F. ARGUMENT AND CITATIONS OF AUTHORITY	4
The decision below expressly and directly conflicts with <i>Housing Authority of the City of Tampa v. Burton</i> , 873 So. 2d 356 (Fla. 2d DCA 2004), <i>Pinfield v. State</i> , 710 So. 2d 201 (Fla. 5th DCA 1998), and <i>Guzzetta v. Hamrick</i> , 656 So. 2d 1327 (Fla. 5th DCA 1995), regarding whether a circuit court's order on a petition for writ of prohibition is reviewable by appeal or certiorari.....	4
G. CONCLUSION.....	10
H. CERTIFICATE OF SERVICE.....	11
I. CERTIFICATE OF COMPLIANCE	12

B. TABLE OF CITATIONS

	Page
1. Cases	
<i>Baez v. State</i> , 699 So. 2d 305 (Fla. 3d DCA 1997)	9
<i>Bundy v. Rudd</i> , 366 So. 2d 440 (Fla. 1978)	6
<i>Findley v. State</i> , Case No. 1D05-5931	2
<i>Guzzetta v. Hamrick</i> , 663 So. 2d 630 (Fla. 1995) (table).....	6
<i>Guzzetta v. Hamrick</i> , 656 So. 2d 1327 (Fla. 5th DCA 1995)	2-4, 6, 8-9
<i>Harris v. Culbreath</i> , 818 So. 2d 563 (Fla. 2d DCA 2002)	6
<i>Housing Authority of the City of Tampa v. Burton</i> , 873 So. 2d 356 (Fla. 2d DCA 2004)	2-7, 9
<i>Loftis v. State</i> , 682 So. 2d 632 (Fla. 5th DCA 1996)	6
<i>Mank v. Hendrickson</i> , 195 So. 2d 574 (Fla. 4th DCA 1967)	6
<i>Pinfield v. State</i> , 710 So. 2d 201 (Fla. 5th DCA 1998)	3, 4, 6, 9
<i>Sheley v. Florida Parole Comm-n</i> , 720 So. 2d 216 (Fla. 1998)	8-9
<i>Sheley v. Florida Parole Comm-n</i> , 703 So. 2d 1202 (Fla. 1st DCA 1997)	9
<i>State v. Brown</i> , 527 So. 2d 207 (Fla. 3d DCA 1987)	6, 8
<i>State v. Frazee</i> , 617 So. 2d 350 (Fla. 4th DCA 1993)	2-3, 7-9
<i>State v. Shaw</i> , 643 So. 2d 1163 (Fla. 4th DCA 1994)	6
<i>Sutton v. State</i> , Case No. 1D05-5922	2
<i>Treiman v. State</i> , 343 So. 2d 819 (Fla. 1977).....	6
2. Other Authority	

Art. V, ' 3(b)(3), Fla. Const.	4
Fla. R. App. P. 9.030(a)(2)(A)(iv)	4
Fla. R. App. P. 9.030(b)(2)(B)	7, 8
Fla. R. App. P. 9.030(c)(1)	1, 8
Fla. R. App. P. 9.030(c)(3)	1, 8
Fla. R. App. P. 9.040(c)	6
Fla. R. App. P. 9.210(a)(2).....	12
Philip J. Padovano, <i>Florida Appellate Practice</i> ' 21.4 (2006 ed. West Group)	7
Philip J. Padovano, <i>Florida Appellate Practice</i> ' 21.4 (2003 ed. West Group)	6

C. STATEMENT OF THE CASE AND STATEMENT OF THE FACTS.

The Petitioners¹ sought review in the First District Court of Appeal of the circuit court's final orders denying their petitions for writs of prohibition. The petitions were filed in the circuit court as original actions (i.e., the writs invoked the original jurisdiction of the circuit court, *see* Fla. R. App. P. 9.030(c)(3), as opposed to the appeal jurisdiction of the circuit court, *see* Fla. R. App. P. 9.030(c)(1)). The Petitioners requested the circuit court to issue the writs of prohibition directing a county judge to take no further action in their cases. The Petitioners had previously filed motions to disqualify in county court, which were denied by the county judge.

The Petitioners timely filed notices of appeal from the circuit court's denials of the writs of prohibition. On December 22, 2005, the First District issued an order to show cause as to why the notices of appeal should not be treated as invoking the district court's certiorari jurisdiction. The parties thereafter filed pleadings arguing their respective positions. Both parties acknowledged in their pleadings that there is a current conflict

¹ There are eleven Petitioners in this case. The issue in all eleven cases is identical. On April 24, 2006, the district court granted the Petitioners' motion to consolidate these cases for all appellate purposes. Accordingly, the Petitioners filed one notice to invoke the discretionary jurisdiction of this Court, which contained all eleven case numbers from the district court.

among the district courts as to whether a circuit court's order on a petition for writ of prohibition is reviewable by appeal or certiorari. *Compare Housing Authority of the City of Tampa v. Burton*, 873 So. 2d 356, 357-58 (Fla. 2d DCA 2004) (holding that the denial of a petition for writ of prohibition is reviewable by appeal); *with State v. Frazee*, 617 So. 2d 350, 351 (Fla. 4th DCA 1993) (holding that the issuance of a petition for writ of prohibition is reviewable by certiorari).

On April 20, 2006, the First District issued a decision ~~A~~determin[ing] that the order[s] denying the petition[s] for writ[s] of prohibition [are] reviewable by petition for writ of certiorari.[@] A copy of the district court's decision is included in the appendix to this brief.² In the decision, the First District acknowledged the conflict among the district courts by citing to *Frazee* from the Fourth District Court of Appeal and *Guzzetta v. Hamrick*, 656 So. 2d 1327 (Fla. 5th DCA 1995), from the Fifth District Court of Appeal.³ The Petitioners submit that this Court should accept jurisdiction in order to resolve the conflict among the district courts regarding whether a circuit court's order on a

² Of the eleven cases, *Findley v. State*, Case No. 1D05-5931, was the case in which the district court requested the parties to file pleadings regarding whether the denials of the petitions for writs of prohibition were reviewable by appeal or certiorari. The district court's decision in *Findley* is included in the appendix to this brief. After the district court issued the decision in *Findley*, all eleven cases were consolidated ~~A~~for all appellate purposes[@] and Petitioner Sutton's case was designated as the lead case (because Petitioner Sutton was assigned the earliest case number). The district court's decision in *Sutton v. State*, Case No. 1D05-5922, is also included in the appendix to this brief.

³ In *Guzzetta*, the Fifth District held that the denial of a petition for writ of prohibition is reviewable by appeal. *See* 656 So. 2d at 1327.

petition for writ of prohibition is reviewable by appeal or certiorari.

D. SUMMARY OF ARGUMENT.

There is a current conflict among the district courts as to whether a circuit court's order on a petition for writ of prohibition is reviewable by appeal or certiorari. The First District Court of Appeal in the instant case and the Fourth District Court of Appeal in *State v. Frazee*, 617 So. 2d 350, 351 (Fla. 4th DCA 1993), both held that a circuit court's order on a petition for writ of prohibition is reviewable by certiorari. In contrast, the Second District Court of Appeal in *Housing Authority of the City of Tampa v. Burton*, 873 So. 2d 356, 357-58 (Fla. 2d DCA 2004), and the Fifth District Court of Appeal in *Pinfield v. State*, 710 So. 2d 201, 201 n.1 (Fla. 5th DCA 1998), both held that a circuit court's order on a petition for writ of prohibition is reviewable by appeal. In the decision below, the First District expressly acknowledged the conflict by citing to *Frazee* from the Fourth District and then including a *but see* citation to *Guzzetta v. Hamrick*, 656 So. 2d 1327, 1327 (Fla. 5th DCA 1995), from the Fifth District. In another case where the Fifth District held that a circuit court's denial of a petition for writ of prohibition is reviewable by appeal. Accordingly, the Petitioners submit that the conflict among the district courts on this issue is express and direct.

E. JURISDICTIONAL STATEMENT.

The Court has discretionary jurisdiction to review a decision of a district court of appeal that expressly and directly conflicts with a decision of another district court of

appeal on the same point of law. *See* Art. V, ' 3(b)(3), Fla. Const.; Fla. R. App. P. 9.030(a)(2)(A)(iv).

F. ARGUMENT AND CITATIONS OF AUTHORITY.

The decision below expressly and directly conflicts with *Housing Authority of the City of Tampa v. Burton*, 873 So. 2d 356 (Fla. 2d DCA 2004), *Pinfield v. State*, 710 So. 2d 201 (Fla. 5th DCA 1998), and *Guzzetta v. Hamrick*, 656 So. 2d 1327 (Fla. 5th DCA 1995), regarding whether a circuit court's order on a petition for writ of prohibition is reviewable by appeal or certiorari.

The Petitioners sought review in the First District Court of Appeal of the circuit court's final orders denying their petitions for writs of prohibition. The Petitioners requested the circuit court to issue the writs of prohibition directing a county judge to take no further action in their cases. The Petitioners had previously filed motions to disqualify in county court, which were denied by the county judge.

The Petitioners sought review of the circuit court's final orders by filing timely notices of appeal. However, the district court below concluded that ~~A~~the order[s] denying the petition[s] for writ[s] of prohibition [are] reviewable by petition for writ of certiorari rather than by appeal.

Recently, in *Housing Authority of the City of Tampa v. Burton*, 873 So. 2d 356, 357-58 (Fla. 2d DCA 2004), the Second District Court of Appeal addressed an *identical fact pattern* and held that the circuit court's denial of a petition for writ of prohibition was reviewable by the district court as an appealable final order:

The Tampa Housing Authority seeks certiorari review of the circuit court's order denying its petition for writ of prohibition. The petition for

writ of prohibition had sought to disqualify the county judge from further proceedings in litigation to evict a tenant of the Housing Authority. *We treat the petition for writ of certiorari as an appeal from the circuit court and affirm.*

In Hillsborough County Court, the Housing Authority obtained a favorable jury verdict in the eviction trial of Connie Burton, a resident of public housing in Tampa. When ruling on Burton's motion for a new trial, the county judge denied the motion on the grounds asserted but ordered a new trial on his own initiative based on his personal observation that one juror was *inconsistently asleep in the jury box during the presentation of evidence* and that *to allow the jury verdict to stand would be a manifest injustice.* The trial record did not contain any mention by either party or the judge of a sleeping juror. *The Housing Authority filed a motion to disqualify the county judge*, accompanied by affidavits of representatives of the Housing Authority who were present during the trial but did not observe the juror sleeping. The Housing Authority feared judicial prejudice or bias because the county judge did not raise the issue of juror misconduct until after the trial's conclusion, even though such misconduct could have been cured by seating an alternate juror during the trial. *The county judge denied the motion.*

The Housing Authority filed a petition for writ of prohibition in the Circuit Court of the Thirteenth Judicial Circuit seeking to direct the county judge to disqualify himself. Ruling that the Housing Authority's motion lacked sufficient facts alleging prejudice or bias, *the circuit court denied the petition.*

The order denying the Housing Authority's petition for writ of prohibition concluded the original proceeding in the circuit court. As such, the order is an appealable final order. See Harris v. Culbreath, 818 So. 2d 563, 564 (Fla. 2d DCA 2002); Loftis v. State, 682 So. 2d 632, 633 (Fla. 5th DCA 1996); State v. Brown, 527 So. 2d 207, 208 (Fla. 3d DCA 1987); Philip J. Padovano, Florida Appellate Practice ' 21.4 (2003 ed. West Group); but see State v. Shaw, 643 So. 2d 1163 (Fla. 4th DCA 1994). Accordingly, we treat the Housing Authority's petition for writ of certiorari as a timely filed notice of appeal. See Fla. R. App. P. 9.040(c). (Emphasis added.)

In another case involving an identical fact pattern, the Fifth District Court of Appeal also held that the circuit court's denial of a petition for writ of prohibition was

reviewable by appeal rather than by certiorari:

A petition for writ of prohibition is the proper vehicle for obtaining review of a lower tribunal's denial of a motion for disqualification. *See Bundy v. Rudd*, 366 So. 2d 440 (Fla. 1978). An order of the circuit court ruling on a petition for writ of prohibition is a final order reviewable by appeal. *See Guzzetta v. Hamrick*, 656 So. 2d 1327 (Fla. 5th DCA 1995), *rev. denied*, 663 So. 2d 630 (Fla. 1995).

Pinfield v. State, 710 So. 2d 201, 201 n.1 (Fla. 5th DCA 1998).⁴

In contrast, in *State v. Frazee*, 617 So. 2d 350 (Fla. 4th DCA 1993), which was relied upon by the court below, the Fourth District Court of Appeal held that the circuit court's issuance of a writ of prohibition is reviewable by certiorari. *Frazee* involved a review of the issuance of a writ of prohibition by the circuit court directed to the county court wherein the county court had denied the defendant's motion for discharge under the speedy trial rule:

The State of Florida has perfected this appeal to review the issuance of a writ of prohibition by the circuit court directed to the county court wherein that court had denied Douglas Paul Frazee's motion for discharge under the speedy trial rule. *We believe this matter is properly reviewed by this court under Florida Rule of Appellate Procedure 9.030(b)(2)(B) and thus we*

⁴ *See also Harris v. Culbreath*, 818 So. 2d 563, 564 (Fla. 2d DCA 2002) (reviewing denial of petition for writ of prohibition as an appealable final order); *Loftis v. State*, 682 So. 2d 632, 633 (Fla. 5th DCA 1996) (A circuit court's order on a writ of prohibition is a final appealable order, and is not reviewable by certiorari.); *State v. Brown*, 527 So. 2d 207, 207 (Fla. 3d DCA 1987) (holding that it was proper to review by appeal a circuit court's order which granted the defendant's petition for writ of prohibition and precluded the county court from trying her because of a violation of the speedy trial rule); *Treiman v. State*, 343 So. 2d 819 (Fla. 1977) (involving an appeal from the circuit court's order granting a writ of prohibition precluding county judge from presiding over case); *Mank v. Hendrickson*, 195 So. 2d 574 (Fla. 4th DCA 1967) (same).

treat it as a petition for writ of certiorari.

Fraze, 617 So. 2d at 351 (emphasis added).

In his most recent edition, Judge Padovano acknowledges that there is a conflict on this issue between the Second and Fifth Districts and the Fourth District. *See* Philip J. Padovano, *Florida Appellate Practice* ' 21.4, pg. 411 n.16 (2006 ed. West Group). Judge Padovano distinguishes between pleadings filed pursuant to the circuit court's original jurisdiction and pleadings filed pursuant to the circuit court's appeal jurisdiction. *See* Padovano, *supra*, ' 21.4 at pg. 411, n.16 & pg. 412 n.17. However, Judge Padovano cites to *Burton* with approval and states, "The proper method of reviewing a final order denying a complaint for writ of prohibition is by appeal, not certiorari." Padovano, *supra*, ' 21.4 at pg. 411 n.16. The procedural posture of *Burton* is identical to the instant case (i.e., denial of motion to disqualify judge in county court and denial of writ of prohibition in circuit court).

Finally, in the decision below, the First District expressly acknowledged the conflict among the district courts by citing to *Fraze* from the Fourth District and then including a *but see* citation to *Guzzetta v. Hamrick*, 656 So. 2d 1327 (Fla. 5th DCA 1995), from the Fifth District **B** another case where the court held that the denial of a petition for writ of prohibition is reviewable as an appealable final order.⁵

⁵ In its original order directing the Petitioners to show cause why this case should not be treated as invoking the district court's certiorari jurisdiction, the court below cited to this Court's opinion in *Sheley v. Florida Parole Commission*, 720 So. 2d 216 (Fla.

1998). *Sheley*, however, is factually distinguishable from the instant case. *Sheley* involved an order of the Florida Parole Commission suspending a defendant's presumptive parole release date. *See Sheley*, 720 So. 2d at 217. The defendant petitioned the circuit court for a writ of mandamus to review the Parole Commission's order. *See id.* The circuit court denied the petition and the defendant sought further review. *See id.* The First District treated the appeal as a petition for writ of certiorari and denied the petition, and this Court approved the First District's decision. *See id.* at 217-18. Notably, in *Sheley*, the Court emphasized that A[m]andamus is an accepted remedy for reviewing an order of the Florida Parole Commission.@ *Id.* at 217 (emphasis added). Therefore, when the defendant in *Sheley* filed the petition for a writ of mandamus in the circuit court, the petition invoked the appeal jurisdiction of the circuit court, pursuant to Florida Rule of Appellate Procedure 9.030(c)(1), and further review of the Parole Commission's decision invoked the district court's certiorari jurisdiction, pursuant to Florida Rule of Appellate Procedure 9.030(b)(2)(B). *See id.* In contrast, when a defendant files a petition for writ of prohibition in the circuit court seeking to prevent a county court from taking further action in a case, the petition invokes the circuit court's original jurisdiction pursuant to Florida Rule of Appellate Procedure 9.030(c)(3). *See Brown*, 527 So. 2d at 208 (A[The defendant's] petition for writ of prohibition instituted an original proceeding in the circuit court which challenged the jurisdiction of the county court judge.@) (emphasis added). Such a petition is not necessarily directed towards an order of the county court. *See Baez v. State*, 699 So. 2d 305, 305-06 (Fla. 3d DCA 1997) (reversing denial of petition for writ of prohibition, thereby precluding subsequent trial on double jeopardy grounds). For all of these reasons, the Petitioners submit that *Sheley* is not applicable to the instant case; *Sheley* is limited to cases where the circuit court acts in its appellate capacity B it does not apply to cases where the circuit court acts pursuant to its original jurisdiction. In *Sheley v. Florida Parole Commission*, 703 So. 2d 1202, 1204 (Fla. 1st DCA 1997), the First District recognized this distinction:

We acknowledge that if mandamus is used to initiate a new civil action in the circuit court, the resulting final order is subject to review by appeal. Mandamus is an action at law, and, as with other actions at law, a final judgment on a complaint for writ of mandamus is reviewable by appeal.

(Citation omitted). Consistent with the First District's language in *Sheley*, the Petitioners submit that the writs of prohibition filed in the circuit court in the instant case were Anew civil actions@ and therefore the Afinal judgment[s] on [the] complaint[s]@ for the writs of prohibition are Areviewable by appeal.@ *Sheley*, 703 So. 2d at 1204.

Notably, the court below did *not* cite to *Sheley* as the basis for its decision to treat the Petitioners' cases as invoking the district court's certiorari jurisdiction. Moreover, the

Accordingly, for all of the reasons set forth above, the Petitioners submit that there is a clear conflict among the district courts **B** a conflict that is both express and direct. The Petitioners respectfully request the Court to accept jurisdiction in this case and resolve the conflict between (1) the case below and the Fourth District's decision in *Fraze* (holding that a circuit court's order on a petition for writ of prohibition is reviewable by certiorari) and (2) the Second District's decision in *Burton* and the Fifth District's decisions in *Pinfield* and *Guzzetta* (holding that a circuit court's order on a petition for writ of prohibition is reviewable by appeal).⁶ This issue has an impact on the administration of justice throughout the state because resolution of this issue will clarify and unify the appropriate standard of review that district courts should use when reviewing the grant or denial of writs of prohibition filed in circuit court.

G. CONCLUSION.

decision in *Burton* was released *after Sheley*, indicating that the Second District concluded that *Sheley* is inapplicable to the instant fact pattern.

⁶ The briefing schedule in the court below has been stayed pending review of the district court's decision ordering that this case proceed as a petition for writ of certiorari. The Petitioners submit that it is appropriate at this stage of the case for the Court to accept jurisdiction and resolve the conflict because the issue in dispute (whether the denial of a petition for writ of prohibition is reviewable by appeal or certiorari) was resolved in finality pursuant to the district court's April 20, 2006, decision. It is likely that any further decision by the district court on the merits of this case will refrain from addressing the appeal/certiorari issue and therefore the Petitioners could be foreclosed from pursuing this issue at a later date. Moreover, the Petitioners submit that this issue regarding the appropriate standard of review must be addressed prior to any ruling on the merits. Once a decision on the merits is reached, the Act will be out of the bag and it will be difficult, if not impossible, for the district court to reassess the case under a different standard.

The Court has discretionary jurisdiction to review the decision below. The Court should exercise its discretion and resolve the conflict among the district courts regarding whether a circuit court's order on a petition for writ of prohibition is reviewable by appeal or certiorari.

H. CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the foregoing instrument has been furnished to:

Assistant Attorney General Robert Wheeler
Tallahassee Bureau Chief, Criminal Appeals
PL01, The Capitol
Tallahassee, Florida 32399-1050

by U.S. mail delivery this 1st day of June, 2006.

Respectfully submitted,

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I. CERTIFICATE OF COMPLIANCE

Undersigned counsel hereby certifies pursuant to Florida Rule of Appellate Procedure 9.210(a)(2) that the Jurisdictional Brief complies with the type-font limitation.

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