

IN THE SUPREME COURT OF FLORIDA

CASE NO.

**JESSIE LEVON DYSON,**

Petitioner,

-vs-

**STATE OF FLORIDA,**

Respondent.

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**BRIEF OF PETITIONER ON JURISDICTION**

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ON PETITION FOR DISCRETIONARY REVIEW  
FROM THE DISTRICT COURT OF APPEAL  
OF FLORIDA, THIRD DISTRICT

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**INTRODUCTION**

This is a petition for discretionary review of the decision of the Third District Court of Appeal in *Dyson v. State*, 31 Fla. L. Weekly D1580 (Fla. 3d DCA June 7, 2006), on the grounds of express and direct conflict of decisions. In this brief of petitioner on jurisdiction, all references are to the appendix attached to this brief, paginated separately and identified as “A,” followed by the page number(s). All emphasis is supplied unless the contrary is indicated.

## STATEMENT OF THE CASE AND FACTS

In its decision in this case, the Third District Court of Appeal affirmed the trial court's imposition of a habitual felony offender sentence, based on petitioner's commission of attempted first degree murder, consecutive to a mandatory life imprisonment sentence for the first degree murder of another victim in the same shooting spree:

We also reject the claim that the court improperly imposed a habitual felony offender sentence, based on defendant's commission of attempted first degree murder occurring in the same shooting spree, consecutive to, rather than concurrent with, a mandatory life in prison sentence for the first degree murder of another victim. *Cheatham v. State*, 659 So.2d 287 (Fla. 3d DCA 1994), is exactly on point and mandates this result. *See Downs v. State*, 616 So.2d 444 (Fla.1993); *see also Roberts v. State*, 923 So.2d 578 (Fla. 5th DCA 2006); *cf. State v. Ferreira*, 840 So.2d 304 (Fla. 5th DCA 2003).

Affirmed.

(A. 2).

A motion for rehearing was filed on June 19, 2006, and denied on August 18, 2006. Notice of invocation of this Court's discretionary jurisdiction was filed August 31, 2006.

## SUMMARY OF ARGUMENT

In its decision in this case, the Third District Court of Appeal affirmed the trial court's imposition of a habitual felony offender sentence, based on petitioner's conviction of attempted first degree murder, consecutive to a mandatory life imprisonment sentence for the first degree murder of another victim in the same shooting spree. This decision of the Third District Court of Appeal expressly and directly conflicts with (1) the decision of this Court in *Hale v. State*, 630 So.2d 521 (Fla.1993), *cert. denied*, 513 U.S. 909 (1994), which held that sentences for multiple crimes arising from a single criminal episode cannot be both enhanced under the habitual felony offender statute and imposed consecutively, and (2) the decision of the Fifth District Court of Appeal in *State v. Ferreira*, 840 So.2d 304 (Fla. 5th DCA 2003), which held that this Court's decision in *Hale* barred the imposition of a habitual felony offender sentence, based on the defendant's conviction of attempted armed robbery, consecutive to a mandatory life imprisonment sentence for first degree murder.

## ARGUMENT

**THE DECISION OF THE DISTRICT COURT OF APPEAL, THIRD DISTRICT, IN THE PRESENT CASE EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF THIS COURT IN *Hale v. State*, 630 So.2d 521 (Fla.1993), cert. denied, 513 U.S. 109 (1994), AND THE DECISION OF THE FIFTH DISTRICT COURT OF APPEAL IN *State v. Ferreira*, 840 So.2d 304 (Fla. 5th DCA 2003).**

In its decision in this case, the Third District Court of Appeal rejected the defendant's claim that the trial court improperly both enhanced the defendant's sentence for attempted first degree murder under the habitual offender statute and ran that sentence consecutive to the defendant's sentence for first degree murder of another victim where both offenses occurred in the same shooting spree. The district court of appeal based this ruling on a finding that its prior decision in *Cheatham v. State*, 659 So.2d 287 (Fla. 3d DCA 1994) "is exactly on point and mandates this result." (A. 2).

In *Hale v. State*, 630 So.2d 521, 524 (Fla.1993), cert. denied, 513 U.S. 909 (1994), this Court held that sentences for multiple crimes arising from a single criminal episode cannot be both enhanced under the habitual felony offender statute and imposed consecutively:

We find nothing in the language of the habitual offender statute which suggests that the legislature also intended that, once the sentences from multiple crimes committed during a single criminal episode have been enhanced through the habitual offender statutes, the total penalty should then be further increased by ordering that the sentences run consecutively.

Decisions issued subsequent to *Hale* have repeatedly held that a court may not impose a non-habitual offender sentence consecutive to a habitual offender sentence where both crimes arose from the same criminal episode. See *Fuller v. State*, 867 So.2d 469 (Fla. 5th DCA), review denied, 887 So.2d 1236 (Fla.2004); *Kiedrowski v. State*, 876 So.2d 692 (Fla. 1st DCA 2004); *State v. Ferreira*, 840 So.2d 304 (Fla. 5th DCA 2003).

In *Ferreira*, the defendant was sentenced on a first degree murder conviction to life in prison without parole, and was also sentenced on an attempted armed robbery conviction as a habitual offender to a consecutive thirty year prison term. After the trial court corrected the sentence based on *Hale*, the State appealed, claiming that *Hale* did not apply because the defendant was only sentenced as a habitual offender on one of the convictions. The Fifth District Court of Appeal held that *Hale* barred the imposition of consecutive sentences:

The State urges that *Hale* should not apply because Ferreira was classified as an habitual offender on only one of the convictions, attempted armed robbery. However, it seems axiomatic that whether the first degree murder sentence runs consecutive to the armed robbery sentence or whether the armed robbery sentence runs consecutive to the first degree murder sentence, the overall sentence has been enhanced twice because of the classification as an habitual offender. We agree with the trial court that *Hale* applies and affirm.

840 So.2d at 305.

In the present case, as in *Ferreira*, the defendant was sentenced on a first degree murder conviction to life in prison without parole, and was also classified



as a habitual offender and sentenced to a consecutive term of imprisonment on a conviction for another offense committed in the same criminal episode (attempted robbery in *Ferreira* and attempted first degree murder in the present case). The decision of the Third District Court of Appeal in the present case affirming the imposition of these consecutive sentences expressly and directly conflicts with the decision of the Fifth District Court of Appeal in *Ferreira* which held that this Court's decision in *Hale* barred the imposition of consecutive sentences under these circumstances. It is therefore respectfully submitted that this Court should exercise its discretionary jurisdiction to review the decision of the district court of appeal in this case based on this express and direct conflict of decisions.

## CONCLUSION

Based on the foregoing facts, authorities and arguments, petitioner respectfully requests this Court to exercise its discretionary jurisdiction to review the decision of the Third District Court of Appeal.

Respectfully submitted,

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BY: \_\_\_\_\_  
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## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered by hand to the Office of the Attorney General, Criminal Division, 444 Brickell Avenue, Suite 650, Miami, Florida 33131, this 1st day of September, 2006.

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HOWARD K. BLUMBERG  
Assistant Public Defender

## **CERTIFICATE OF FONT**

Undersigned counsel certifies that the type used in this brief is 14 point proportionately spaced Times New Roman.

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HOWARD K. BLUMBERG  
Assistant Public Defender