

IN THE SUPREME COURT OF FLORIDA

LEROY REEVES,

Petitioner,

v.

Case No. SC06-504

STATE OF FLORIDA

Respondent.

ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

JURISDICTIONAL BRIEF OF RESPONDENT

CHARLES J. CRIST, JR.
ATTORNEY GENERAL

KELLIE A. NIELAN
ASSISTANT ATTORNEY GENERAL
Fla. Bar No. 618550

MARY G. JOLLEY
ASSISTANT ATTORNEY GENERAL
Fla. Bar No. 0080454

444 Seabreeze Boulevard
Fifth Floor
Daytona Beach, FL 32118
(386) 238-4990
(386) 238-4997 (FAX)

COUNSEL FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

STATEMENT OF FACTS 1

SUMMARY OF ARGUMENT 2

ARGUMENT

THIS COURT SHOULD NOT ACCEPT
JURISDICTION IN THIS CASE. 3

CONCLUSION 5

CERTIFICATE OF SERVICE 6

CERTIFICATE OF COMPLIANCE 6

TABLE OF AUTHORITIES

Cases

Reaves v. State,
485 So.2d 829 (Fla. 1986) 3

Reeves v. State,
920 So.2d 724 (Fla. 5th DCA 2006) 1

Rodriguez v. State,
883 So.2d 908 (Fla. 2d DCA 2004) 2,3

Other Authorities

Art. V, Sec. 3, Fla. Const. 3

STATEMENT OF FACTS

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

Reeves was convicted of four third-degree felonies: burglary of a structure, grand theft, resisting a law enforcement officer with violence, and battery on a law enforcement officer. Reeves was sentenced to five years in prison on each charge to be served consecutively, including a PRR sentence for resisting a law enforcement officer with violence. In denying Reeves's rule 3.800 motion, the trial court concluded that each of Reeves's offenses were separate and not part of one criminal episode. Our review of the record leads us to the conclusion that the burglary of a structure and the grand theft charges arose from a single incident, while the resisting arrest and battery on a law enforcement officer occurred as part of a separate criminal episode. However, our conclusion that Reeves engaged in two criminal episodes, and not four, does not change the result.

Reeves v. State, 920 So.2d 724, 725 (Fla. 5th DCA 2006).

SUMMARY OF ARGUMENT

This Court should not accept jurisdiction of this case because there is no express and direct conflict. The case which Petitioner relies upon for conflict presents distinct facts and reaches a distinct legal conclusion based upon those facts.

ARGUMENT

THIS COURT SHOULD NOT ACCEPT
JURISDICTION IN 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).

Reeves contends that the opinion below expressly and directly conflicts with Rodriguez v. State, 883 So.2d 908 (Fla. 2d DCA 2004).

In the opinion below, the district court acknowledged that its legal conclusion conflicted with Rodriguez, regarding the propriety of a consecutive sentence imposed to a prison releasee reoffender minimum mandatory statutory maximum sentence. Reeves, 920 So.2d at 726. However, Rodriguez is premised on the factual basis that the sentences arose from criminal offenses that occurred during the same criminal episode. Rodriguez, 883 So.2d at 910. The district court below found that Reeves engaged in two criminal episodes. Reeves, 920 So.2d at 725. While the district court did state in dicta that the fact that there were two episodes did not change its result, Rodriguez and Reeves still differ factually. Also, Rodriguez entered his sentence pursuant to a negotiated plea

whereas here Reeves did not enter a plea but was convicted by a jury. Because factual differences exist, there is no express and direct conflict.

Because Rodriguez addresses different facts upon which its legal conclusion is based, that decision cannot serve as a basis to invoke the discretionary jurisdiction of this Court based upon express and direct conflict with the opinion below. This is not a case in which this Court should exercise its discretion and invoke its jurisdiction.

CONCLUSION

Based on the foregoing argument and authority, the State respectfully requests that this Court decline to accept jurisdiction of this case.

Respectfully submitted,
CHARLES J. CRIST, JR.
ATTORNEY GENERAL

KELLIE A. NIELAN
ASSISTANT ATTORNEY GENERAL

MARY G. JOLLEY
ASSISTANT ATTORNEY GENERAL
Fla. Bar No. 0080454
444 Seabreeze Boulevard
Fifth Floor
Daytona Beach, FL 32118
(386) 238-4990
(386) 238-4997 (FAX)
Mary_Jolley@oag.state.fl.us

COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Respondent's brief on jurisdiction has been furnished by delivery to Assistant Public Defender Susan A. Fagan, counsel for Petitioner Reeves, 444 Seabreeze Boulevard, Daytona Beach, Florida 32118, this _____ day of April, 2006.

CERTIFICATE OF COMPLIANCE

The undersigned counsel certifies that this brief was typed using 12 point Courier New, a font that is not proportionately spaced.

MARY G. JOLLEY
COUNSEL FOR RESPONDENT

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APPENDIX

CHARLES J. CRIST, JR.
ATTORNEY GENERAL

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ASSISTANT ATTORNEY GENERAL
Fla. Bar No. 618550

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ASSISTANT ATTORNEY GENERAL
Fla. Bar No. 0080454

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COUNSEL FOR RESPONDENT