IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. SC07-1402

BLANCHARD ST. VAL,

Petitioner,

- versus -

STATE OF FLORIDA,

Respondent.

RESPONDENT'S BRIEF ON JURISDICTION

CHARLES J. CRIST, JR.
Attorney General
Tallahassee, Florida

CELIA A. TERENZIO
Assistant Attorney General
Chief, West Palm Beach Bureau
Florida Bar No. 0656879

HEIDI L. BETTENDORF
Assistant Attorney General
Florida Bar No. 0001805
1515 North Flagler Drive, Ninth Floor
West Palm Beach, FL 33401
Tel: (561) 837-5000
Fax: (561) 837-5099

Counsel for Respondent

Table Of Contents

Page:

Table Of Citations

Cases: **Page:**

Constitutional Provisions: **Page:**

Preliminary Statement

Petitioner was the Defendant and Respondent was the Prosecution in the Criminal Division of the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida. Petitioner was Appellant and Respondent was Appellee in the District Court of Appeal of Florida, Fourth District. In this brief, the parties shall be referred to as they appear before this Honorable Court except that Respondent may also be referred to as the State.

Statement Of The Case And Facts

Noting that in determining jurisdiction, this Court is limited to the facts apparent on the face of the opinion, Hardee v. State, 534 So. 2d 706, 708 n.1 (Fla. 1988), Respondent presents the following:

"After a jury trial, appellant Blanchard St. Val was convicted of one count of attempted first degree murder with a firearm, one count of attempted second degree murder, and two counts of shooting into an occupied vehicle. The evidence at trial was that he shot at two people in a car; one victim was wounded in the arm and head. The state presented eyewitness testimony from victims acquainted with St. Val, in addition to ballistics and DNA expert testimony." St. Val v. State, 958 So. 2d 1146, 1146 (Fla. 4th DCA 2007). "At sentencing, the trial judge took St. Val's lack of remorse into consideration as part of her broader rejection of his characterization of the crime as an accident in which someone just happened to get shot." Id. Petitioner appealed his sentence to the Fourth District Court of Appeal. Petitioner contended on appeal that the sentencing judge impermissibly considered Petitioner's lack of remorse when imposing sentence.

The Fourth District issued a written opinion, affirming Petitioner's sentence and rejecting petitioner's claim that a trial court may never consider a defendant's lack of remorse when imposing sentence. The Fourth District Court of Appeal

noted "[t]his is not a case where a defendant was punished for protesting his innocence," . . . "[n]or is it a case where a court used lack of remorse as an aggravating factor in a first degree murder prosecution." Id. (citations omitted).

However, the Fourth District Court of Appeal certified conflict with K.Y.L. v. State, 685 So. 2d 1380 (Fla. 1st DCA 1997), "which holds that a defendant's lack of contrition or remorse is 'a constitutionally impermissible consideration in imposing sentence' in all circumstances." St. Val v. State, 958 So. 2d at 1146 (quoting K.Y.L. v. State, 685 So. 2d at 1381). Based on this certification of conflict, Petitioner seeks review of the decision of the Fourth District Court of Appeal.

Summary Of The Argument

This Court does not have jurisdiction to review the instant case. The decision of the Fourth District Court of Appeal in the instant case does not expressly and directly conflict with the decision of the First District Court of Appeal in K.Y.L. v. State, 685 So. 2d 1380 (Fla. 1st DCA 1997). Therefore, this Court should not review the case at bar and should dismiss Petitioner's case.

Argument

THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL IN THE INSTANT CASE IS NOT IN DIRECT CONFLICT WITH THE DECISION OF THE FIRST DISTRICT COURT OF APPEAL IN K.Y.L. V. STATE, 685 So 2d 1380 (Fla. 1st DCA 1997).

The Fourth District Court of Appeal has certified that its decision in St. Val v. State, 958 So. 2d 1146 (Fla. 4th DCA 2007), conflicts with the decision of the First District Court of Appeal in K.Y.L. v. State, 685 So. 2d 1380 (Fla. 1st DCA 1997).

Article V, § 3(b)(3) of the Florida Constitution restricts this Court's review of a district court of appeal's decision only if it expressly conflicts with a decision of another district court of appeal. It is not enough to show that the district court's decision is effectively in conflict with other appellate decisions. However, this Court's jurisdiction to review the Fourth District's decision in this case may be invoked by either the announcement of a rule of law which conflicts with a law previously announced by this Court or another district court of appeal or by the application of a rule of law to produce a different result in a case which involves substantially the same facts as a prior case. Mancini v. State, 312 So. 2d 732, 733 (Fla. 1975).

The term "expressly" requires some written representation or expression of

the legal grounds supporting the decision under review. See Jenkins v. State, 385 So. 2d 1356 (Fla. 1980). A decision of a district court of appeal is no longer reviewable on the ground that an examination of the record would show that it is in conflict with another appellate decision; it is reviewable if the conflict can be demonstrated from the district court of appeal's opinion itself. The district court of appeal must at least address the legal principles which were applied as a basis for the decision. See Ford Motor Co. v. Kikis, 401 So. 2d 1341, 1342 (Fla. 1981).

When determining whether conflict jurisdiction exists, this Court is limited to the facts which appear on the face of the opinion. Hardee v. State, 534 So. 2d at 708, n.1; White Constr. Co. v. Dupont, 455 So. 2d 1026 (Fla. 1984). In the past, this Court has held that it would not exercise its discretion where the opinion below established no point of law contrary to the decision of this Court or of another district court of appeal. The Florida Star v. B.J.F., 530 So. 2d 286, 289 (Fla. 1988). "'Conflict between decisions must be express and direct, i.e., it must appear within the four corners of the majority decision.' In other words, inherent or so called 'implied' conflict may no longer serve as a basis for this Court's jurisdiction." State, Department of Health v. National Adoption Counseling Service, Inc., 498 So. 2d 888, 889 (Fla. 1986) (quoting Reaves v. State, 485 So. 2d 829, 830 (Fla. 1986)). See also School Board of Pinellas County v. District Court of Appeal, 467 So. 2d

985, 986 (Fla. 1985).

In this case, although the Fourth District certified conflict with the First District's opinion in K.Y.L. v. State, 685 So. 2d 1380 (Fla. 1st DCA 1997), it is clear that there is no conflict. In K.Y.L., following an adjudicatory hearing, the trial judge found that K.Y.L. had committed delinquent acts. Id. at 1380. A predisposition report recommended community control, but the trial judge elected to commit the child to a residential programs. Id. The judge stated he was committing K.Y.L., because she showed "no contrition . . . no acknowledgement of wrongdoing." Id. at 1381. The First District vacated the commitment order, holding that "lack of contrition or remorse is a constitutionally impermissible consideration in imposing sentence." Id.

In the case at bar, the Fourth District properly noted a distinction between cases where a defendant is punished for protesting his innocence and those where defendants do not contest their commission of the criminal acts but fail to show remorse for them. St. Val. V. State, 958 So. 2d at 1146. It is clear from the face of the Fourth District's opinion that K.Y.L. falls into the former category and the case at bar falls into the latter category. Therefore, based upon this factual distinction, there cannot possibly be conflict between the districts.

Consequently, since this case and K.Y.L. are "distinguishable in controlling

factual elements," there is no "direct and express conflict." See Florida Power and Light Co. v. Bell, 113 So. 2d 697 (Fla. 1959) (if the two cases are distinguishable in controlling factual elements or if the points of law settled by the two cases are not the same, then no conflict can arise). Accordingly, this Court should decline to review the lower court's decision in this case.

Conclusion

WHEREFORE, based on the foregoing argument and authorities, Respondent respectfully submits that this Court should decline to grant review in the above-styled cause.

Respectfully submitted,

BILL McCOLLUM
Attorney General
Tallahassee, Florida

_____

CELIA A. TERENZIO
Assistant Attorney General
Chief, West Palm Beach Bureau
Florida Bar No. 0656879

_____

HEIDI L. BETTENDORF
Assistant Attorney General
Florida Bar No. 0001805
1515 North Flagler Drive,
Ninth Floor
West Palm Beach, FL 33401
Tel: (561) 837-5000
Fax: (561) 837-5099

Counsel for Respondent

Certificate Of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to Patrick B. Burke, Esquire, Assistant Public Defender, Criminal Justice Building, Sixth Floor, 421 Third Street, West Palm Beach, Florida, 33401, this ____ day of August, 2007.

_____

HEIDI L. BETTENDORF
Assistant Attorney General

Certificate Of Type Size And Style

In accordance with Fla. R. App. P. 9.210(a)(2), Appellee hereby certifies that the instant brief has been prepared with Times New Roman 14 point font.

_____

HEIDI L. BETTENDORF
Assistant Attorney General

APPENDIX