

IN THE SUPREME COURT OF FLORIDA

ERIC GABRIEL GRIFFIN
PETITIONER,

V

CASE NO SC07-168

STATE OF FLORIDA,
RESPONDENT.

RESPONDENT'S JURISDICTIONAL BRIEF
ON REVIEW FROM THE SECOND
DISTRICT COURT OF APPEAL
STATE OF FLORIDA

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STATEMENT OF THE CASE AND FACTS

Petitioner was convicted after a jury trial of sexual battery while using a deadly weapon, and burglary with battery. On appeal, the Second District Court of Appeal affirmed Petitioner's convictions but reversed as to certain costs imposed, based upon a finding that said costs were improper because they were enacted after the date when Petitioner committed the crime and therefore violated the Ex Post Facto clause of the U.S. Constitution. In so ruling, the Second District certified conflict with the First District Court of Appeal decision in Ridgeway v. State, 892 So. 2d 538 (Fla. 1st DCA 2005).

SUMMARY OF THE ARGUMENT

While Petitioner correctly argues that the lower court has certified express and direct conflict with the decision of another district court of appeal on the same point of law, the present issue is unlikely to be of wide application and is largely moot. Further, Petitioner is improperly seeking review in a case where he prevailed, in order that he might raise issues which were not identified by the lower court as the basis for conflict.

ARGUMENT

THIS COURT SHOULD NOT ACCEPT JURISDICTION TO CONSIDER THE SECOND DISTRICT'S DECISION

I. Standard of Review:

This Court has discretionary jurisdiction to review cases arising from the district courts of appeal where a decision from one district court of appeal is certified to be in direct conflict with a decision of another district court of appeal pursuant to Fla. R. App. Proc.

9.030(a)(2)(A)(vi). In the instant case, the Second District Court of Appeal certified that its decision in Griffin v. State, 947 So. 2d 610 (Fla. 2nd DCA 2007) conflicts with Ridgeway v. State, 892 So. 2d 538 (Fla. 1st DCA 2005) on the issue of whether certain court costs imposed against Petitioner violate the prohibition against ex post facto laws where the statute authorizing those costs was enacted after the date of the crime in question.

II. Argument:

Petitioner seeks to invoke this Court's discretionary jurisdiction. This Court's jurisdiction is found in the Florida Constitution, Article V, ' 3(b)(3), which requires a petitioner seeking to invoke the discretionary jurisdiction of this Court demonstrate that the lower court's opinion

"expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law." This Court has identified two basic forms of decisional conflict which properly justify the exercise of jurisdiction under section 3(b)(3) of the Florida Constitution. Either (1) where an announced rule of law conflicts with other appellate expressions of law, or (2) where a rule of law is applied to produce a different result in a case which involves "substantially the same controlling facts as a prior case. . . ." Nielsen v. City of Sarasota, 117 So. 2d 731, 734 (Fla. 1960).

It is the Respondent's position that while this Court has authority to consider the question as certified by the lower court, it nevertheless should decline to do so because the issue will be moot for the vast majority of defendants affected by the issue addressed by the Second District. Further, Respondent would suggest that Petitioner's request that this Court accept jurisdiction on the basis of conflict is disingenuous, as the grounds which he advances as the basis for this Court's acceptance of jurisdiction is conflict which arose out of a case in which Petitioner was the victor; he therefore was not prejudiced by the lower court's ruling, in that he

succeeded in obtaining an Order which strikes certain court costs erroneously imposed by the trial court.

Instead, Petitioner seeks to obtain review of the instant case in hopes that this Court will consider collateral matters which are not the basis for the lower court's determination with regard to conflict, and it is Respondent's position that it is improper for Petitioner to seek access to this Honorable Court for the reasons he presently has posited.

Specifically, Petitioner asks this Court to consider that portion of the lower court's ruling which, he contends, incorrectly limits the scope of Fla. R. Crim. Proc. 3.800(b). Although it approved Petitioner's argument with regard to costs imposed, the Second District rejected Petitioner's argument that the trial court improperly considered documents used by the State to establish the propriety of Petitioner's sentence as a prison releasee reoffender because trial counsel failed to make a timely objection and thereby waived appellate review. Petitioner contends that the effect of this ruling will be to prevent subsequent review of similar issues except in a complaint alleging ineffective assistance of counsel filed pursuant to Rule 3.850. The State agrees that the lower court's ruling will have this effect, but rejects Petitioner's

assertion that he is prejudiced thereby. In any event, because this issue was not the basis for the lower court's declaration of conflict with the First District, there is no cause for this Court to consider this argument. In Williams v. State, 889 So. 2d 804 (Fla. 2004), this Court addressed a certified question from the Second District Court of Appeal regarding whether Anders procedures are applicable to Ryce commitment proceedings. This Court declined to address another issue raised by Petitioner since it was outside the scope of the certified question and was not the basis of its discretionary review. See also Friedrich v. State, 767 So. 2d 451 (Fla. 2000); Paulucci v. Gen. Dynamics Corp., 842 So. 2d 797, 799 (Fla., 2003); Allstate Ins. Co. v. Manasse, 707 So. 2d 1110, 1112 (Fla. 1998)(Court declined to address issue of attorney's fees which was outside the scope of certified question).

Accordingly, this Court should decline to exercise its jurisdiction in this case.

CONCLUSION

Respondent respectfully requests that this Honorable Court decline to exercise its jurisdiction in this case.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished by U.S. Mail to: Brad Permar, Assistant Public Defender, c/o Polk County Courthouse, P.O. Box 9000 Drawer PD, Bartow, Florida, 33831 on this 2nd day of March, 2007.

CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 12-point Courier New, in compliance with Fla. R. App. P. 9.210(a)(2).

Respectfully submitted,

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APPENDIX

- A. Second District Court Opinion filed January 5, 2007-
Griffin v. State, 946 So. 2d 610 (Fla. 2d DCA 2007)