

IN THE SUPREME COURT OF THE STATE OF FLORIDA

LAKERY HECK)	
)	
Petitioner,)	
)	
vs.)	CASE NO. SC07-
)	DCA CASE NO. 4D06-1052
STATE OF FLORIDA,)	
)	
Respondent.)	
_____)	

PETITIONER’S BRIEF ON DISCRETIONARY JURISDICTION

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ARGUMENT

THIS HONORABLE COURT HAS AUTHORITY PURSUANT TO ARTICLE V, SECTION 3(B)4 OF THE FLORIDA CONSTITUTION (1980) AND FLORIDA RULE OF APPELLATE PROCEDURE 9.303 (a) (2)(A)(vi) TO REVIEW THIS DECISION OF A DISTRICT COURT OF APPEAL IN WHICH THAT DISTRICT COURT CERTIFIES CONFLICT WITH THE DECISION OF ANOTHER DISTRICT COURT OF APPEAL.....	5
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PRELIMINARY STATEMENT

Petitioner, Mr. Lakery Heck was the defendant and Respondent, the State of Florida was the prosecution in the Criminal Division of the Circuit Court of the Seventeenth Judicial Circuit, in and for Broward County, Florida.

In the brief, the parties will be referred to as they appear before this Honorable Court.

STATEMENT OF THE CASE AND THE FACTS

Petitioner, Lakery Heck, was charged by information with one count of robbery with a firearm, one count of attempted first degree murder, one count of attempted felony murder and one count of possession of a firearm by a convicted felon. Petitioner's motion for judgment of acquittal on the robbery with a firearm count was granted and a charge of attempted robbery with a firearm was submitted to the jury. Petitioner was convicted on all counts.

Prior to trial, the state had filed its notice of intent to seek a prison releasee reoffender. At sentencing the state sought to enter certified copies of Petitioner's prior convictions as well as a certificate of last release from prison. Petitioner posed a hearsay objection and cited to *Gray v. State*, 910 So.2d 867 (Fla. 1st DCA 2005) and *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531, 403 (2004). The trial court overruled the objection and admitted the documents under the business records exception. Among other sentences imposed, Petitioner received a life sentence as a prison releasee reoffender.

Petitioner's timely Notice of Appeal was filed with the Fourth District Court of Appeal on March 13, 2006. Petitioner argued that his dual convictions for attempted premeditated murder and attempted felony murder for the shooting of a single person violated his double jeopardy protections. Petitioner also argued that

the “crime and time” document used to establish his date of last release from prison and qualify him for sentencing as a prison releasee reoffender was hearsay and had been improperly admitted.

The Fourth District Court of Appeal in a written opinion, *Heck v. State*, 2007 WL 3087411 (Fla. 4th DCA October 24, 2007)[Appendix], ordered one of Petitioner’s attempted murder conviction vacated and affirmed his prison releasee reoffender sentence:

“As for Heck’s PRR sentence, the State relied upon a “Certification of Records” from a DOC records custodian and the accompanying pages of DOC computer print-outs to establish the predicates for PRR sentencing. Heck objected to the admission of the report on hearsay grounds. His objection was overruled. Heck insists the trial court was wrong in overruling his hearsay objection. We have already decided this issue adversely to Heck and decline to revisit the matter. *See Yisrael v. State*, 938 So. 2d 546 (Fla. 4th DCA 2006) (*en banc*), *review granted*, 956 So. 2d 458 (Fla. 2007); *see also Carswell v. State*, 947 So. 2d 692 (Fla. 4th DCA 2007); *Montero v. State*, 947 So. 2d 634 (Fla. 4th DCA 2007). As we did in *Yisrael*, we certify conflict with *Gray v. State*, 910 So. 2d 867 (Fla. 1st DCA, *review denied*, 920 So. 2d 628 (Fla. 2005).”

Timely Notice of Discretionary Review was filed by Petitioner on November 5, 2007.

SUMMARY OF THE ARGUMENT

This Honorable Court has the authority, pursuant to Article V, Section 3 (b)(4) of the *Florida Constitution* and *Florida Rule of Appellate Procedure* 9.030 (a)(2)(A)(vi), to review a decision of a district court of appeal that are certified to be in direct conflict with decisions of other district courts of appeal. The Fourth District Court of Appeal recognized the opinion issued in the instant case directly conflicts with that of the First District Court of Appeal in *Gray v. State*, 910 So. 2d 867 (Fla. 1st DCA 2005), *review denied* and certified that Conflict as it had previously done in *Yisrael v. State*, 938 So. 2d 546 (Fla. 4th DCA 2006).

ARGUMENT

THIS HONORABLE COURT HAS AUTHORITY PURSUANT TO ARTICLE V, SECTION 3(B)4 OF THE FLORIDA CONSTITUTION (1980) AND FLORIDA RULE OF APPELLATE PROCEDURE 9.303 (a) (2)(A)(vi) TO REVIEW THIS DECISION OF A DISTRICT COURT OF APPEAL IN WHICH THAT DISTRICT COURT CERTIFIES CONFLICT WITH THE DECISION OF ANOTHER DISTRICT COURT OF APPEAL.

Article V, section 3(b)(4) of the Florida Constitution vests this Honorable Court with jurisdiction to hear appeals in criminal cases and specifically states:

- (4) May review any decision of a district court of appeal that passes upon a question that certifies to be of great public importance, or that is certified by it to be in direct conflict with a decision of another district court of appeal.

Accord Florida Rule of Appellate Procedure 9.030 (a)(2)(A)(vi). In State v. Vickery, 961 So.2d 309, 311 (Fla. 2007), this Court noted:

As already informally recognized, “district court opinions accepted [for review as certified conflict cases under article V, section 3(b)(4) of the Florida Constitution] . . . almost uniformly met two requirements: they use the word ‘certify’ or some variation of the root word ‘certif’.-’ in connection with the word ‘conflict;’ and, they indicate a decision from another district court upon which the conflict is based.

In its written opinion, the Fourth District Court of Appeal certified conflict with the decision of the First District Court of Appeal in *Gray v. State*, 910 So. 2d 867 (Fla. 1st DCA, *review denied*, 920 So. 2d 628 (Fla. 2005). *See Heck v. State*, 2007 WL 3087411 (Fla. 4th DCA October 24, 2007). In its opinion, the Fourth District Court of Appeal also noted that it had previously certified conflict with Gray in its decision in *Yisrael v. State*, 938 So. 2d 546 (Fla. 4th DCA 2006) (*en banc*), *review granted*, 956 So. 2d 458 (Fla. 2007).

CONCLUSION

Petitioner respectfully requests this Honorable Court accept discretionary review over the instant cause and review it on the merits. Respectfully submitted.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to August Bonavita, Assistant Attorney General, Office of the Attorney General, Ninth Floor, 1515 N. Flagler Drive, West Palm Beach, Florida 33401-3432, by courier this _____ day of November, 2007.

Of Counsel

CERTIFICATE OF FONT SIZE

I HEREBY CERTIFY the instant brief has been prepared with 14 point Times New Roman type, in compliance with a R. App. P. 9.210(a)(2), this ___ day of November, 2007.

Ellen Griffin
Assistant Public Defender