

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC07-2256

Lower Tribunal Case No. 3D05-2153

ELI ENRIQUE VALDES,

Petitioner,

-vs-

THE STATE OF FLORIDA,

Respondent.

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

BRIEF OF RESPONDENT ON JURISDICTION

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STATEMENT OF THE CASE AND FACTS

The history of the case is set out in Valdes v. State, supra, and is also set out in the petitioner's jurisdictional brief, and is hereby adopted.

SUMMARY OF THE ARGUMENT

This Court should decline to exercise its discretion to accept this case because the lower court's opinion does not reflect that the petitioner will serve additional time as a result of the second shooting conviction and, therefore, there is no purpose in granting review if it is not clear that success by the petitioner in this Court would make any practical difference.

ARGUMENT

I. THIS COURT SHOULD DENY DISCRETIONARY REVIEW

BECAUSE SUCCESS IN THIS CASE WOULD NOT MAKE ANY PRACTICAL DIFFERENCE TO THE PETITIONER.

In this brief, the State of Florida responds to the petitioner's claim while referring only to the facts discussed in the lower court opinion in Valdes v. State, 970 So.2d 414 (Fla. 3d DCA 2007), as required by Article V, Sec. 3(b)(3) of the Florida Constitution which provides that conflict between decisions must be express and direct, i.e., it must appear within the four corners of the majority decision. Reaves v. State, 485 So.2d 829, 830 (Fla. 1986).

Art. 5, Sec. 3(b)(4), of the Florida Constitution provides that this Court may review any decision of a district court of appeal that is certified by it to be in direct conflict with a decision of another district court of appeal.¹ Certioari is limited to specific situations in the Supreme Court, and is discretionary with the Supreme Court. Moses v. R.H. Wright & Son, Inc., 90 So.2d 330, 333 (Fla. 1956); First National Bank of Gainesville v. Gibbs, 82 So. 618, 619 (Fla. 1919); Rhome v.

¹State v. Vickery, 961 So.2d 309, 311 (Fla. 2007) discusses the Florida Supreme Court's discretionary jurisdiction over cases in which a district court of appeal certifies conflict and cases in which a district court of appeal simply acknowledges, discusses, cites, suggests, or in any other way recognizes conflict.

State, 293 So.2d 761, 762 (Fla. 3d DCA 1974).

This Court should exercise its discretion and not grant review of the lower court opinion, even though the Third District Court of Appeal certified conflict with Lopez-Vazquez v. State, 931 So.2d 231 (Fla. 5th DCA 2006), because the lower court's opinion does not reflect that the petitioner will serve additional time as a result of the second shooting conviction.² Therefore, there is no purpose in granting review if it is not clear that success by the petitioner in this Court would make any practical difference. In this case, discretionary should be exercised to deny review.

CONCLUSION

²The opinion states that the defendant, Eli Enrique Valdes, appeals the judgment of conviction and sentence after a jury finding of guilt for three counts of attempted second degree murder with a firearm; one count of discharging a firearm from a vehicle in violation of section 790.15(2), Florida Statutes (2003); and one count of shooting into an occupied vehicle in violation of section 790.19, Florida Statutes (2003). (A.2)

Based on the foregoing authorities and arguments, the Respondent State of Florida respectfully requests that this Honorable Court exercise its discretion and decline to accept jurisdiction in this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing

Brief of Respondent on Jurisdiction was mailed this 1st day of February, 2008 to Assistant Public Defender Maria E. Laredo, 1320 N.W. 14th Street, Miami, Florida 33125.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief is in compliance with the font standards required by Rule 9.210(a)(2), Florida Rules of Appellate Procedure, and is submitted in Courier New 12-point font.

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