

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v.

Case No.

Fifth DCA Case No. 5D07-1105

ROBERT RABEDEAU,

Respondent.

-----/

ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

JURISDICTIONAL BRIEF OF PETITIONER

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STATEMENT OF FACTS

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

Rabedeau was originally convicted of three counts of lewd and lascivious conduct-all second degree felonies. For those convictions, he was ordered to serve three concurrent two-year terms of community control, followed by three concurrent thirteen year terms of probation. He subsequently violated his community control and was sentenced to three concurrent five year prison terms, followed by three concurrent nine year terms of probation. After Rabedeau completed his prison term, the State filed an affidavit alleging that he had violated several conditions of his probation. Rabedeau ultimately entered a guilty plea to the violation of probation charges. The trial court sentenced Rabedeau to three consecutive ten year prison terms. Rabedeau was given credit for the five years already served in prison as to only one of the three counts.

Rabedeau subsequently filed a motion to correct sentence pursuant to Florida Rule of Criminal Procedure 3.800(b). He contended he was entitled to five years of prison term credit on each of the three counts. Bound by the Gisi decision, the trial court denied Rabedeau's motion.

Rabedeau v. State, 32 Fla. L. Weekly D2949 (Fla. 5th DCA December 14, 2007).

SUMMARY OF ARGUMENT

This Court should accept jurisdiction in this case because in the decision below, the district court of appeal certified conflict with Gisi v. State, 948 So.2d 816 (Fla. 2d DCA), rev. granted, 952 So.2d 1189 (Fla. 2007). Additionally, the decision below expressly and directly conflicts with Gisi. Thus, this Court should accept review of this case on either of these jurisdictional bases.

ARGUMENT

THIS COURT SHOULD ACCEPT
JURISDICTION IN THIS CASE.

This Court has jurisdiction under article V, section (3)(b)(4) of the Florida Constitution where a decision of a district court is certified by "it to be in direct conflict with a decision of another district court of appeal."

In the decision below, the district court of appeal certified conflict with the Second District Court of Appeal in Gisi v. State, 948 So.2d 816 (Fla. 2d DCA), rev. granted, 952 So.2d 1189 (Fla. 2007), regarding the following question:

Is a defendant, on resentencing, entitled to credit on each newly imposed consecutive sentence for prison time already served on the original concurrent sentences?

Rabedeau, 32 Fla. L. Weekly at D2949 (emphasis in original). This Court has granted review in Gisi and that case has been fully briefed in this Court. See Gisi, 952 So.2d at 1189. Given that the district court in the instant case certified a conflict with a decision of another district court of appeal, this Court should grant review in the instant case on this basis.

Additionally, this Court has jurisdiction under article V, section (3)(b)(3) when a district court decision "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).

Here, the district court determined below that the trial court erred in disallowing Rabedeau credit for time served after the imposition of consecutive sentences following the violation of his probation. Rabadeau, 32 Fla. L. Weekly at D2949. The district court concluded that because Rabedeau was previously sentenced to concurrent terms on his three second degree felony convictions, he was entitled to credit against each of the three counts imposed consecutively on resentencing. Id.

In Gisi, the Second District Court of Appeal reached the express and direct opposite conclusion, finding that the defendant was entitled to credit for time served on only one count of the three counts imposed consecutively following a resentencing, after said counts were originally imposed to run concurrently. Gisi, 948 So.2d at 819-820. In doing so, the Second District Court of Appeal certified a question of great public importance to this Court:

Is a defendant on resentencing, entitled to credit on each newly imposed consecutive sentence for prison time already served on the original concurrent sentences?

Id. at 820. Again, this Court granted review in Gisi and that

case has been fully briefed in this Court.

Given that the decision below expressly and directly conflicts with Gisi, this Court should exercise its discretionary jurisdiction and grant review in the instant case on this basis as well.

CONCLUSION

Based on the foregoing argument and authority, the State respectfully requests that this Court 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 above and foregoing Jurisdictional Brief of Petitioner has been furnished by delivery to Assistant Public Defender Noel A. Pelella, counsel for Rabedeau, this _____ day of January, 2008.

CERTIFICATE OF COMPLIANCE

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

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APPENDIX

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