

IN THE SUPREME COURT OF FLORIDA

RICKY BRADLEY,

Petitioner,

v.

Case No. SC08-196

Fifth DCA Case No. 5D06-3577

STATE OF FLORIDA,

Respondent.

_____ /

ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

JURISDICTIONAL BRIEF OF RESPONDENT

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STATEMENT OF FACTS

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

Relevant to this appeal, Mr. Bradley was charged by information with robbery with a firearm in violation of sections 812.13(1) and (2)(a), Florida Statutes (2002). The information included an allegation that in the course of committing the robbery, Mr. Bradley "was in possession of and carried a firearm," and cited section 775.087(2), Florida Statutes (2002). Mr. Bradley subsequently entered a plea of nolo contendere to robbery with a firearm pursuant to a plea agreement calling for a sentence of twenty years in prison with a twenty-year minimum mandatory term resulting from his discharge of a firearm during the robbery. Although no direct appeal was taken, Mr. Bradley then filed a motion to correct sentence pursuant to rule 3.800(b)(2). In his motion, Mr. Bradley argued that his twenty-year minimum mandatory sentence was illegal because the information filed by the State alleged the possession of a firearm, and not the discharge of a firearm. Relying on *Hope v. State*, 588 So.2d 255 (Fla. 5th DCA 1991), the trial court denied the motion. This appeal followed.

At the time that Mr. Bradley entered his plea, his counsel advised the court:

Your Honor, at this time[,] pursuant to negotiations with the [S]tate of Florida[,] Mr. Bradley is going to withdraw his not guilty pleas as to attempted felony*959 murder and armed robbery with a firearm. He's going to be pleading no contest to each count of the information. There's going to be a stipulation that the injuries to the victim ... were moderate. What this does is take it out of the 25[-]year mandatory sentencing under the 10/20/life bill. Which if they were deemed to be severe injuries[,] it would be a mandatory 25.

The agreement is pursuant to the 10/20/life bill he is still exposed, because the firearm was discharged, to 20 years mandatory. He will

be sentenced to 20 years in the state prison with the expectations [sic] he will have to serve 20 years day for day with credit for time served. I've explained to him the only way he'll get out in less than 20 years is if some how the laws change and it applies to it. But as it stands now[,] he's got to do 20 years.

The State agreed that the plea agreement was as represented and Mr. Bradley then entered his plea, stipulating to the facts alleged in the complaint affidavit (which stated that he had discharged a firearm during the commission of the robbery).

Bradley v. State, 971 So.2d 957, 958-959 (Fla. 5th DCA 2007)(footnote omitted).

SUMMARY OF ARGUMENT

This Court should not accept jurisdiction in this case because the decision below does not expressly and directly conflict with Jackson v. State, 852 So.2d 941 (Fla. 4th DCA 2003), rev. denied, 869 So.2d 540 (Fla. 2004). Jackson contains different facts than those presented here, and those distinct facts resulted in a legal conclusion that differed from that made in the instant case.

ARGUMENT

THIS COURT SHOULD NOT ACCEPT
JURISDICTION IN THIS CASE.

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). Likewise, 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 Fourth District Court of Appeal in Jackson v. State, 852 So.2d 941 (Fla. 4th DCA 2003), rev. denied, 869 So.2d 540 (Fla. 2004). However, Jackson contains different facts than those presented here, and those facts are what triggered the legal conclusion made in that case. Notwithstanding the fact that the district court below certified a conflict, the State submits that this Court should not accept jurisdiction in this case.

Both this case and Jackson address the applicability of a twenty-year minimum mandatory sentence required when a firearm is discharged during the commission of an enumerated felony when the

discharge of the firearm is not alleged in the charging document. In the instant case, the district court of appeal found that although the charging document did not allege that Bradley discharged a firearm in the robbery with a firearm charge, he was still subject to a twenty-year sentence under the 10/20/Life sentencing scheme pursuant to a plea agreement which called for the twenty-year sentence. Bradley, 971 So.2d at 960-961. Bradley stipulated to the factual basis for his plea, which included the fact that he had discharged the firearm during the commission of the robbery. Also, the record plainly showed that Bradley was well-aware that he was subject to the enhanced twenty-year sentence when he entered his plea. Id. at 959-960. Thus, even though the charging document did not allege that the weapon was discharged, the district court of appeal determined that Bradley could still be sentenced to the twenty-year minimum mandatory based upon the totality of the facts. See id.

No such facts existed in Jackson. In Jackson, there was neither a stipulation during to the plea colloquy to the fact that the firearm at issue was discharged nor was there any discussion on the record regarding the applicability of the twenty-year minimum mandatory sentence for discharge of the firearm. See Jackson, 852 So.2d at 943-945. In fact, during the plea colloquy, the parties were under the mistaken assumption that Jackson was subject to a twenty-five year minimum mandatory term. Id. at 943. Thus, the

Fourth District Court of Appeal concluded that a twenty-year sentence was illegal since the discharge of firearm was not alleged in the information.

Given that the decision below contains distinguishable facts from those presented in Jackson, this Court should not exercise its discretionary jurisdiction and grant review in the instant case based upon either an express and direct conflict or based upon the conflict certified by the district court of appeal below.

CONCLUSION

Based on the foregoing argument and authority, the State respectfully requests that this Court 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 above and foregoing Jurisdictional Brief of Respondent has been furnished by delivery to Assistant Public Defender Rebecca M. Becker, counsel for Bradley, this _____ day of February, 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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