IN THE SUPREME COURT OF THE STATE OF FLORIDA

RICKY BRADLEY,

Petitioner,

v. S. Ct. Case No.

STATE OF FLORIDA,

Respondent.
_____/

ON DISCRETIONARY REVIEW FROM
THE DISTRICT COURT OF APPEAL, FIFTH DISTRICT

PETITIONER'S BRIEF ON JURISDICTION

JAMES S. PURDY
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

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STATEMENT OF THE CASE AND FACTS

Petitioner was charged by information with one count of attempted felony murder and one count of robbery with a firearm. The information alleged that in the course of committing the robbery, petitioner "was in possession of and carried a firearm" and cited Section 775.087 (2), Florida Statutes (2002). Petitioner subsequently entered a plea of no contest to the offenses pursuant to a plea agreement calling for a sentence of twenty years in prison with a twenty year minimum mandatory term resulting from the discharge of a firearm during the robbery. At the time of entering his plea, petitioner's counsel stated:

> the agreement is pursuant to the 10/20/life bill he is still exposed, because the firearm was discharged, to twenty years mandatory. He will be sentenced to twenty years in the state prison with the expectations [sic] he will have to serve twenty years day for day with credit for time served. I've explained to him the only way he'll get out in less than twenty years is if somehow the laws change and it applies to it. But as it stands now [,] he's got to do twenty years.

Petitioner was then sentenced to the mandatory twenty years under the 10/20/life statutes. No direct appeal was taken from the judgment and sentence but subsequently petitioner filed a motion to correct the sentence arguing that the twenty year minimum mandatory was illegal because the information filed by the State alleged the possession of a firearm, and not a discharge of a firearm. The

trial court denied the motion and an appeal was taken to the Fifth District Court of Appeal. The Fifth District affirmed the denial of relief finding that the plea colloquy supplied the missing allegations of discharge and constituted an implicit amendment to the information. In doing so, the Fifth District acknowledged that on identical facts the Fourth District reached the opposite conclusion on ***Jackson v. State,*** 852 So. 2d 941 (Fla. 4th DCA 2003) review denied 869 So. 2d 540 (Fla. 2004). The Fifth District certified express and direct conflict with ***Jackson.*** ***Bradley v. State,*** 33 Fla. L. Weekly D76 (Fla. 5th DCA, December 28, 2007).

Petitioner filed a timely notice to invoke this Court's discretionary jurisdiction on January 25, 2008.

SUMMARY OF ARGUMENT

This Court has jurisdiction to review the decision of the Fifth District below wherein the Court on identical facts certified direct and express conflict with the decision of the Fourth District Court of Appeal.

ARGUMENT

THE DECISION OF THE FIFTH DISTRICT COURT OF APPEAL IN BRADLEY v. STATE, 33 FLA. L. WEEKLY D 76 (FLA. 5TH DCA DECEMBER 28, 2007) IS IN DIRECT AND EXPRESS CONFLICT WITH THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL IN JACKSON v. STATE, 852 So. 2d 941 (FLA. 4TH DCA 2003) REVIEWED DENIED 869 So.2d 540 (FLA. 2004) SO AS TO ALLOW THIS COURT TO EXERCISE ITS DISCRETIONARY JURISDICTION.

Section 775.087 (2), Florida Statutes (2002), the "10/20/life" statute, provides for the enhancement of the crime where a firearm is possessed or used during the commission of certain enumerated crimes. In order to reclassify a crime under the 10/20/life statute, the grounds for enhancement must be charged in the information. ***Koch v. State***, 874 So.2d 606 (Fla. 5th DCA 2004); ***Rogers v. State,*** 963 So.2d 328 (Fla. 2nd DCA 2007); ***Gibbs v. State***, 623 So. 2d 551 (Fla. 4th DCA 1993).

In ***Jackson v. State***, 852 So. 2d 941 (Fla. 4th DCA 2003) review denied 869 So. 2d 540 (Fla. 2004) the defendant pled to the offense of robbery with a deadly weapon. The information charging this offense alleged only that in the course of committing the robbery Jackson carried a firearm. However, during the plea colloquy it was discussed that the charge would carry a twenty five to life mandatory minimum because the firearm was discharged resulting in great bodily

harm to the victim. This information was included in the written plea petition which listed a minimum mandatory twenty-five to life. Jackson was sentenced to life with the minimum mandatory sentence of twenty-five years. During direct appeal, counsel filed a motion to correct the sentencing arguing that the twenty-five year mandatory was illegal because the information failed to allege that Jackson has discharged the firearm. The motion to correct was denied and on appeal the Fourth District Court of Appeal granted relief. The Fourth District noted that the information only charged that Jackson carried a firearm not discharged a firearm. Consequently the Court held that appellant could only be convicted of the offense with which he was charged. In so ruling, the Court rejected the State's argument that Jackson had waived any challenge to the sentence by way of his no contest plea. The fact that Jackson and his counsel were under the mistaken belief that he was pleading to an offense that carried a twenty- five year mandatory minimum did not transform the illegality of that sentence where only a ten year mandatory minimum had been pled in the information. Although the Court noted the State could have moved to amend the information to supply the missing elements it did not do so. The Fourth District went on to certify conflict with the Second District Court of Appeal in ***Brlecic v. State***, 456 So.2d 503 (Fla.

2nd DCA 1984). However, this Court refused to accept jurisdiction. 869 So. 2d 540 (Fla. 2004)

In the instant case, petitioner was charged with committing a robbery with a firearm under an information that alleged that in the course of committing the robbery, petitioner " was in possession of and carried a firearm." The information never charged that petitioner discharged the firearm. During the plea colloquy, petitioner's trial counsel stated that the plea was to the offense as charged with the recognition that the twenty year mandatory minimum for discharging a firearm would apply. The trial court accepted the plea and imposed the mandatory minimum twenty year sentence. Subsequently, petitioner filed a motion to correct the sentence arguing that on the authority of ***Jackson supra,*** the sentence was illegal since the information failed to allege that he had discharged a firearm. The trial court denied relief and on appeal the Fifth District Court of Appeal affirmed. Noting that the decision in ***Jackson*** was identical to the situation before them the Court nevertheless denied relief believing the decision in ***Jackson*** placed form over substance. In so ruling, the Fifth District approved the practice of "implicitly amending" an information by supplying missing elements during a plea colloquy. Such practice should not be condoned. Only the State has the right to file charges either through the grand jury process or by direct file. Defense counsel should not

be placed in the position of "perfecting" the charges against his client. It is not a novel law to require the State to properly charge a criminal defendant. An illegal sentence should not be transformed implicitly to a legal sentence by statements made by a defense counsel. The decision by the Fifth District is in direct conflict with the decision of the Fourth District Court of Appeal the decision cannot be reconciled. This Court has jurisdiction to accept the case resolve the conflict and quash the decision of the Fifth District Court of Appeal.

CONCLUSION

Based on the foregoing reasons and authorities cited herein, petitioner respectfully requests this Honorable Court to exercise its discretionary jurisdiction and accept the instant case for review to resolve the conflict between the Districts.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been hand delivered to: The Honorable Bill McCollum., 444 Seabreeze Boulevard, Fifth Floor, Daytona Beach, Florida 32118, via his basket at the Fifth District Court of Appeal, and mailed to Ricky Bradley, DC# 167298, Columbia C. I., 216 S E Corrections Way, Lake City, FL 32025 on this 4th day of February, 2008.

MICHAEL S. BECKER FOR: REBECCA M. BECKER
ASSISTANT PUBLIC DEFENDER

CERTIFICATE OF FONT

I hereby certify that the size and style of type used in this brief is 14 point Times New Roman font.

MICHAEL S. BECKER REBECCA M. BECKER
ASSISTANT PUBLIC DEFENDER