

IN THE SUPREME COURT OF FLORIDA

BRUCE MADEIROS,)
)
 Petitioner,)
)
 vs.)
)
 STATE OF FLORIDA,)
)
 Respondent.)
 _____)

CASE No.
DCA Case No. 4D06-3669

PETITIONER’S JURISDICTIONAL BRIEF

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STATEMENT OF THE CASE AND FACTS

The Fourth District Court of Appeal affirmed the trial court's resentencing Appellant to 15 years imprisonment with credit for time served in the one case and consecutively to two years imprisonment without credit for time served in other case. Petitioner was originally sentenced concurrently to 17 years imprisonment on both of the two second degree felony cases.

In *Madeiros v. State*, 33 Fla. L. Weekly D2366 (Fla. 4th DCA October 8, 2008), the Fourth District Court wrote:

Appellant filed multiple motions attacking this sentence. The circuit court granted his third motion to correct a sentencing error, and resentenced appellant to 15 years in prison on one case, with credit for 204 days plus all time served in the Department of Corrections, nunc pro tunc to August 23, 2006. On the second conviction, the court resentenced appellant to two years in prison consecutive to the 15 year sentence. The trial court declined to award the same credit for time served that it had awarded on the first charge.

Appellant contends that he should have been awarded the same credit on the two year sentence as he received on the 15 year sentence.

This case is controlled by *Gisi v. State*, 948 So. 2d 816 (Fla. 2d DCA 2007), *rev. granted*, 952 So. 2d 1189 (Fla. 2007). In *Gisi*, the defendant was sentenced to concurrent seventy-one year sentences upon multiple convictions. 948 So. 2d at 817. On remand for resentencing, the trial court imposed three consecutive fifteen-year sentences. *Id.* The defendant appealed claiming that the trial court erred in failing to give mandatory credit for time served on each of the three

resentenced counts. *Id.* at 819. He argued that, until he was resentenced, he served five years on each of his concurrent sentences, and pursuant to section 921.161, Florida Statutes (1997), credit for time served on each count was mandatory. *Id.* The defendant sought a total of fifteen years of credit against his sentence-five years on each of his new consecutive sentences. *Id.* In holding that defendant was not entitled to credit for five years' time served on each of the three resentenced counts, the second district stated:

We cannot adopt this logic because it elevates a legal fiction into a reality that would thwart society's ability to have its judges fully impose a punishment that the judges believe to be appropriate. Section 921.161 is not applicable to this case because it addresses the requirement for county jail time credit incurred while a defendant awaits sentencing and does not address the application of state prison time served prior to a resentencing. In any event, jail credit against consecutive sentences is mandatory on only one of the consecutive sentences; anything further is discretionary with the sentencing court.

Gisi, 948 So. 2d at 819 (citing *Keene v. State*, 500 So. 2d 592, 594 n. 2 (Fla. 2d DCA 1986)).

(Appendix).

The Fourth District Court of Appeal certified conflict with *Rabedeau v. State*, 971 So. 2d 913 (Fla. 5th DCA 2007), *rev. granted* 975 So. 2d 429 (Fla. 2008).

Notice to invoke discretionary jurisdiction was filed on November 3, 2008.

SUMMARY OF THE ARGUMENT

The Fourth District Court of Appeal in its written decision in *Madeiros v. State*, 33 Fla. L. Weekly D2366 (Fla. 4th DCA October 8, 2008) certified conflict with *Rabedeau v. State*, 971 So. 2d 913 (Fla. 5th DCA 2007), *rev. granted* 975 So. 2d 429 (Fla. 2008). The Fourth District in *Madeiros* does not require credit for time served to be awarded when a defendant who was originally sentenced concurrently is subsequently resentenced consecutively. By contrast the Fifth District in *Rabedeau* requires credit to be awarded on both sentences. This Court should adopt the Fifth District's holding in *Rabedeau* that a defendant is entitled to credit on each newly imposed consecutive sentence for prison time already served on original concurrent sentences.

ARGUMENT

THIS COURT HAS JURISDICTION BASED ON THE FOURTH DISTRICT'S CERTIFIED CONFLICT WITH *RABEDEAU V. STATE*, 971 SO. 2D 913 (FLA. 5th DCA 2007), *REV. GRANTED* 975 SO. 2D 429 (FLA. 2008).

This Court has discretionary jurisdiction to review a decision of a district court of appeal when the district court certified conflict. Art. V, § 3(b)(4), Fla. Const. *See Anderson v. Gannett Co., Inc.*, 33 Fla. L. Weekly S856 (Fla. October 23, 2008). The Fourth District Court of Appeal in its written decision in *Madeiros v. State*, 33 Fla. L. Weekly D2366 (Fla. 4th DCA October 8, 2008) certified conflict with *Rabedeau v. State*, 971 So. 2d 913 (Fla. 5th DCA 2007), *rev. granted* 975 So. 2d 429 (Fla. 2008).

In addition, this Court has jurisdiction when there is an express and direct conflict with a decision of this Court or another district court of appeal. Art. V, § 3(b)(3), Fla. Const. “The constitutional standard is whether the decision of the District Court on its face collides with a prior decision of this Court, or another District Court, on the same point of law so as to create an inconsistency or conflict among precedents.” *Kincaid v. World Insurance Co.*, 157 So. 2d 517, 518 (Fla. 1963). In this case, the Fourth District’s decision expressly and directly conflicts with *Rabedeau v. State*, 971 So. 2d 913 (Fla. 5th DCA 2007) *rev. granted* 975 So. 2d 429 (Fla. 2008).

There is express and direct conflict in this case between *Madeiros v. State*, 33

Fla. L. Weekly D2366 (Fla. 4th DCA October 8, 2008) and *Rabedeau v. State*, 971 So. 2d 913 (Fla. 5th DCA 2007), *rev. granted* 975 So. 2d 429 (Fla. 2008). In *Madeiros*, the Fourth District does not require credit for time served to be awarded when a defendant who was originally sentenced concurrently is subsequently resentenced consecutively, because according to the Fourth District, such an interpretation would infringe on the trial court's sentencing goals or intentions. By contrast, in *Rabedeau*, the Fifth District requires credit to be awarded on both sentences. *See Rabedeau*, 971 So. 2d at 914. The Fifth District wrote, "By its very nature, concurrent sentences enable a defendant to serve two or more sentences at a single time." *See Rabedeau*, 971 So. 2d at 915. Thus, the Fifth District correctly focused on the defendant's rights in terms of sentencing. *See* § 775.021(1), Fla. Stat. (2007) ("The provisions of this code and offenses defined by other statutes shall be strictly construed; when the language is susceptible of differing constructions, it shall be construed most favorably to the accused."); *Kasichke v. State*, 33 Fla. L. Weekly S481 (Fla. July 10, 2008) (the rule of lenity).

This Court should adopt the Fifth District's holding in *Rabedeau* that a defendant is entitled to credit on each newly imposed consecutive sentence for prison time already served on original concurrent sentences.

CONCLUSION

Petitioner respectfully requests this Court to accept jurisdiction and order briefs on the merits.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of Petitioner's Jurisdictional Brief has been furnished to: AUGUST A. BONAVIDA, Assistant Attorney General, Office of the Attorney General, Ninth Floor, 1515 North Flagler Drive, West Palm Beach, Florida 33401-3432, by courier this _____ day of November, 2008.

Counsel for Appellant

CERTIFICATE OF FONT SIZE

I HEREBY CERTIFY that Petitioner's Initial Brief has been prepared with 14 point Times New Roman type, in compliance with a *Fla. R. App. P.* 9.210(a)(2), this _____ day of November, 2008.

ELISABETH PORTER
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Florida Bar No. 0645648

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PETITIONER'S JURISDICTIONAL

APPENDIX

Madeiras v. State, 33 Fla. L. Weekly D2366 (Fla. 4th DCA October 8, 2008)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of Appendix to Petitioner's Jurisdictional Brief has been furnished to: AUGUST A. BONAVIDA, Assistant Attorney General, Office of the Attorney General, Ninth Floor, 1515 North Flagler Drive, West Palm Beach, Florida 33401-3432, by courier this _____ day of November, 2008.

Counsel for Petitioner