

IN THE SUPREME COURT OF FLORIDA

EDDIE LEE STEADMAN,

Petitioner,

v.

Case No. SC08-2469

STATE OF FLORIDA,

Respondent.

ON PETITION FOR REVIEW FROM
THE SECOND DISTRICT COURT OF APPEAL
STATE OF FLORIDA

BRIEF OF RESPONDENT ON JURISDICTION

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STATEMENT OF THE CASE AND FACTS

Respondent submits its own statement of the case and facts, as follows:

On January 5, 2007, Petitioner was charged in trial court number 06-9195 with burglary of a conveyance (count one), grand theft (count two), aggravated assault (counts three and four), fleeing or attempting to elude (count five), driving while license suspended or revoked (2 or more prior convictions) (count six), and giving false identification to law enforcement (count seven).

On January 16, 2007, an amended information was filed in trial case number 06-9500 charging Petitioner with driving while license suspended or revoked (2 or more prior convictions) (count one), aggravated fleeing or attempting to elude (count two), resisting an officer without violence (count three), burglary of a conveyance (count four), and grand theft of a motor vehicle (count five).

A plea hearing was held on July 9, 2007, in which Petitioner, who was represented by counsel, voluntarily entered a plea of guilty to all charges in both cases. On August 31, 2007, a sentencing hearing was held. The State advised the court it was seeking 30 years state prison as Petitioner had four prior felonies. In trial case 06-9195 the court sentenced Petitioner to five years in prison with credit for time served as to count one. As to count two, Petitioner was sentenced to five years in prison concurrent with count one. As to count three, Petitioner was

sentenced to five years in prison consecutive to counts one and two. Petitioner was sentenced to five years in prison as to count four concurrent with count three but consecutive to counts one and two. As to count five, Petitioner was sentenced to 15 years in prison consecutive to the other sentences. As for count six, Petitioner was sentenced to 5 years in prison consecutive to the other sentences. In count seven, Petitioner was sentenced to one year in jail concurrent with count six.

In case 06-9500, Petitioner was sentenced to five years imprisonment as to count one, consecutive to the other sentence. In count two he was sentenced to five years in prison concurrent with count one. As for count three, Petitioner was sentenced to one year county jail concurrent with counts one and two. In count five Petitioner was sentenced to two years in prison concurrent with counts one, two and three. In count four he was sentenced to two years imprisonment consecutive to all other sentences.

On February 20, 2008, Petitioner filed a motion to correct sentencing error which was denied by the trial court on March 6, 2008. On December 10, 2008, the Second District Court of Appeal per curiam affirmed Petitioner's convictions and sentences citing Gisi v. State, 948 So. 2d 816 (Fla. 2d DCA), review granted, 952 So. 2d 1189 (Fla. 2007).

SUMMARY OF THE ARGUMENT

Appellant has not demonstrated any basis under either the Florida Constitution or the Florida Rules of Appellate Procedure for this Court to review the per curiam opinion of the Second District Court of Appeal. There is no conflict between the instant case and those cited by Petitioner, nor has the issue been certified as one involving a question of great public importance by the Second District Court of Appeal in the instant case. Because there is no express and direct conflict between the decisions, and there has been no question certified by the District Court to be of great public importance in this case, the State respectfully asks this Honorable Court to deny jurisdiction of this case.

ARGUMENT

WHETHER THE PER CURIAM OPINION OF THE SECOND DISTRICT COURT OF APPEAL IN STEADMAN V. STATE, 997 SO. 2D 417 (FLA. 2D DCA 2008), INVOLVES A QUESTION CERTIFIED TO BE OF GREAT PUBLIC IMPORTANCE AND WHETHER THE DECISION OF THE DISTRICT COURT EXPRESSLY AND DIRECTLY CONFLICTS WITH A DECISION OF THIS COURT.

The parameters of the Florida Supreme Court's appellate jurisdiction are set forth in article V, section 3, of the Florida Constitution and Florida Rule of Appellate Procedure 9.030(a)(2)(A). These sections identify the several bases for this Court's exercise of its discretionary jurisdiction to review district court of appeal decisions, as follows:

- (i) expressly declare valid a state statute;
- (ii) expressly construe a provision of the state or federal constitution;
- (iii) expressly affect a class of constitutional or state officers;
- (iv) expressly and directly conflict with a decision of another district court of appeal or of the supreme court on the same question of law;
- (v) pass upon a question certified to be of great public importance;
- (vi) are certified to be in direct conflict with decisions of other district courts of appeal;

Fla. R. App. P. Rule 9.030(a)(2)(A)(2007).

In his jurisdictional brief, Petitioner does not properly allege any of these bases for review. Rather, he claims the per curiam opinion by the Second District Court of Appeal which simply cited to its decision in Gisi v. State, 948 So. 2d 816 (Fla. 2d DCA), review granted, 952 So. 2d 1189 (Fla. 2007), triggered this

Court's discretionary jurisdiction.

Furthermore, Gisi has been decided by this Court and is inapplicable to the facts in the instant case. Gisi v. State, 34 Fla. L. Weekly S94 (2009). The question in Gisi, certified to be of great public importance, was whether a defendant, on resentencing, is entitled to credit on each newly imposed consecutive sentence for prison time already served on the original concurrent sentences. This Court answered the question in the affirmative. However, Gisi involved resentencing where the defendant had already served 5 years on each of his concurrent sentences. Therefore, this Court determined that when he was resentenced to three consecutive 15 year terms, he was entitled to time served on each of the prior counts prior to resentencing.

In the instance case, Petitioner has time served awaiting trial and/or sentencing on two separate criminal episodes flowing from the two different informations filed on different days. In the instant case the initial sentences included concurrent and consecutive time and the two separate cases were sentenced consecutive to each other. Those sentences gave Petitioner appropriate time served on the initial sentences and not on the consecutive sentences, as it should be. To rule otherwise the imposition of appropriate consecutive sentencing would become meaningless.

Petitioner fails to identify any of the conditions set forth

in rule 9.030(a)(2)(A), which would invoke this Court's discretionary jurisdiction. Because Petitioner has failed to allege a valid basis to invoke this Court's jurisdiction, this Court should dismiss the request for discretionary review.

CONCLUSION

Respondent respectfully requests that this Honorable Court decline to accept jurisdiction to review this case.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Bruce P. Taylor, Assistant Public Defender, P.O. Box 9000—Drawer PD, Bartow, Florida 33831-9000, this 6th day of March, 2009.

CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 12-point Courier New, in compliance with Fla. R. App. P. 9.210(a)(2).

Respectfully submitted,

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