

IN THE SUPREME COURT OF FLORIDA

EDDIE LEE STEADMAN, :

Petitioner, :

vs.

STATE OF FLORIDA, :

Respondent. :

Case No. SC08-2469

Lower Tribunal No. 2D07-4748

DISCRETIONARY REVIEW OF DECISION OF THE
DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

BRIEF OF PETITIONER ON JURISDICTION

JAMES MARION MOORMAN
PUBLIC DEFENDER
TENTH JUDICIAL CIRCUIT

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STATEMENT OF THE FACTS AND OF THE CASE

Petitioner was charged in trial court case # 06-9195 with one count of burglary to a vehicle, one count of grand theft of an auto, two counts of aggravated assault, one count of reckless fleeing and eluding, one count of driving on a suspended license and one count of using false identification. Those offenses allegedly occurred on December 4/5, 2006. In a separate information, in Trial Court case # 06-9500, he was charged with one count of driving on a suspended license, one count of aggravated fleeing and eluding, one count of resisting arrest without violence, one count of burglary to an auto and one count of grand theft of an auto. Those offenses allegedly occurred on December 15, 2006. On July 9, 2007 he entered a plea of guilty to all the charges. He was adjudicated guilty as to all counts. As to counts 1 and 2 in case 06-9195, he was sentenced to 5 years in prison, concurrent with each other.

As to counts 3 and 4 in that case he was sentenced to five years in prison, concurrent with each other, but consecutive to the sentences imposed on counts 1 and 2 in that case. As to count 5 in case # 06-9195 he was sentenced to 15 years in prison, consecutive to the first two sentences. In Count 6 he was sentenced to 5 years in prison, and in count 7 to one year in jail. Those sentences were concurrent with each other, but consecutive to the first three sentences. Thus, the total sentence for that case was 30 years in prison. He was not given credit for any time served except as to counts 1 and 2. In case #06-9500, he was sentenced to five years in prison as to counts 1 and 2, to two years in prison as to count 5 and to one year in jail as to count 3. Those sentences were concurrent with each other, but consecutive to the sentences in the other case number. In count 4 he was sentenced to two years in prison, consecutive to all the other sentences. He was not given credit for time served as to count 4 in case # 06-9500. His total sentence was thus 37 years in prison. The appeal to the District Court followed. Petitioner filed a motion to correct sentencing error while that appeal was pending, seeking credit on all sentences for all time previously served by Petitioner while waiting sentencing. The motion was denied. The District Court of Appeal affirmed the judgment and sentence, citing only its own previous decision in Gisi v. State, 948 So. 2nd 816 (Fla. 2nd DCA 2007), rev. granted 952 So. 2nd 1189 (Fla. 2007). In briefs to the District Court, both Petitioner and

Respondent in this cause stated the outcome of this case would be controlled by the outcome in this Court of Gisi. This petition followed. Following the filing of the Notice to Invoke Discretionary Jurisdiction of this Court undersigned counsel discovered a typographical error in that notice. Also, following the filing of the Notice to Invoke Discretionary Jurisdiction in this cause, this Court issued its opinions in Gisi v. State, 34 Fla. Law Weekly S94 (Fla. 2009), and Rabedeau v. State, 34 Fla. Law Weekly S51 (Fla. 2009), granting credit for time served on all the consecutive sentences in those cases, placing the decision of the District Court in this cause in conflict with an opinion of this Court. Contemporaneously with the submission of this brief, an amended/corrected Notice to Invoke Discretionary Jurisdiction is being filed in the District Court, correcting those points.

ISSUES

1. Does Issue in the Second District's Opinion in Eddie Steadman v. State of Florida, Case No. 2D07-4748 (Fla. 2nd DCA March 30, 2007) Involve a Question Certified to be of Great Public Importance?

2. Does Decision of the Second District in Eddie Steadman v. State of Florida, Case No. 2D07-4748 (Fla. 2nd DCA March 30, 2007) conflict with a decision of this Court?

SUMMARY OF ARGUMENT

The Second district's opinion cites a previous opinion of that Court which certifies the essential issues raised in this case to be of great public importance. By so citing the previous decision, the District Court was also certifying the issue in the instant case to be of great public importance. Also, this Court has since ruled in Gisi, creating an express conflict between the District Court's decision and this Court's ruling in Gisi.

ARGUMENT

1. Does Issue in the Second District's Opinion in Eddie Steadman v. State of Florida, Case No. 2D07-4748 (Fla. 2nd DCA March 30, 2007) Involve a Question Certified to be of Great Public Importance?

Fla.R.A.P. 9.030(a)(2)A(v) provides for the discretionary review by this Court of any decision of a District Court that passes upon a question certified to be of great public importance by the District Court. The

opinion of the District Court in the instant case affirmed the Petitioner's judgments and sentences, citing only the decision in Gisi v. State, 948 So. 2nd 816 (Fla. 2nd DCA 2007), rev. granted 952 So. 2nd 1189 (Fla. 2007). In that case, the District Court certified the following question to be of great public importance: "Is a Defendant, on resentencing, entitled to credit on each newly imposed consecutive sentence for prison time already served on the original concurrent sentences?".

This Court, in Jollie v. State, 405 So. 2nd 418 (Fla. 1981) held that such a citation, without more, in an opinion of a district court, was sufficient to trigger this Court's discretionary jurisdiction of review. Although the Jollie decision did not involve matters certified to be of great public importance, no logical distinction can be seen in allowing such a citation of authority in the opinion of a district court to bestow discretionary jurisdiction for one purpose, but not for another.

By only referencing Gisi, it is submitted the District Court certified the question presented in this case to also be of great public importance. Undersigned counsel suggests the question in this case could be succinctly put as "Is a Criminal Defendant entitled to credit on each newly imposed consecutive sentence for county jail time already served while awaiting the imposition of the sentences?"

Furthermore, although the issue in this case involves credit for county jail time while awaiting initial sentencing, and not prison time from serving a portion of the sentence in the same case previously, the Gisi Court relied on and was admittedly persuaded by the logic of the First District in Barnishin v. State, 927 So. 2nd 68 (Fla. 1st DCA 2006) which did deal with the issue of credit for jail time while awaiting sentencing. The District Court's reliance on Barnishin in the Gisi decision is further support for Petitioner's position that the issue in the instant case has been certified to be of great public importance.

Now that Gisi and Rabedeau have been decided, it is submitted that justice requires a decision in the instant case so that Petitioner may have the same credit for time served as others similarly situated, which he would have received had the timing of his case been only slightly different.

2. Does Decision of the Second District in Eddie Steadman v. State of Florida, Case No. 2D07-4748 (Fla. 2nd DCA March 30, 2007) Expressly Conflict with a Decision of this Court?

This ground was not placed in the initial Notice to Invoke Discretionary Jurisdiction, because it did not exist at the time of the initial filing. However, the ground

should still be considered as long as no prejudice results to the opposing party, Roberts v. State, 566 So. 2nd 848 (Fla. 5th DCA 1990). Furthermore, this Court may review an entire case once jurisdiction is accepted, Bell v. State, 394 So. 2nd 979 (Fla. 1981).

As both parties conceded in briefs to the District Court, the outcome in Gisi dictated the outcome in the instant case. Now that Gisi and Rabedeau have been decided, this Court has jurisdiction to review this cause under Fla. R. A. P. 9.030(a)(2)(A)(iv) as well because the decision of the district Court in this case expressly conflicts with this Court's opinions, Jollie, supra.

CONCLUSION

This Court should accept review of the decision of the Second District on the question of whether a criminal defendant is entitled to credit for time served in jail while awaiting sentencing on all consecutive sentences, or only on the first such sentence imposed.

Respectfully Submitted:

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on the Office of the Attorney General at 3507 East Frontage Rd. Ste. 200 Tampa, Fl. 33607 on this the 17th day of February, 2009 by regular U.S. Mail.

CERTIFICATE OF COMPLIANCE

This brief is printed in "courier New" 12 point type in compliance with Fla. R. A. P. 9.210(2).

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APPENDIX