

**IN THE SUPREME COURT OF FLORIDA**

**WALTER A. MCNEIL, Sec.  
Fla. Department of Corrections,**

Petitioner,

v.

**CASE NO. SC 09-1027**  
Lower Tribunal No.: 1D08-3852

**RUNNER SANTANA,**

Respondent.

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**PETITIONER'S JURISDICTIONAL BRIEF**

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**On Review from the District Court of Appeal,**

**First District, State of Florida**

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**ISSUE**

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## **PRELIMINARY STATEMENT**

Respondent, Runner Santana, DC # 540154, is an inmate in the custody of the Department of Corrections and was the petitioner below. The Department of Corrections was the respondent below.

In this brief, Respondent Santana will be referred to as "Santana." Petitioner, the Department of Corrections, will be referred to as "Department."

## **STATEMENT OF THE CASE AND FACTS**

This is an appeal of the decision of the First District Court of Appeal which reversed and remanded the holding of the Fourteenth Judicial Circuit.

On June 24, 2008, Inmate Santana filed a Petition for Writ of Habeas Corpus with the Fourteenth Judicial Circuit, Jackson County, alleging that he had not received the proper amount of prison credit after violating probation. Santana did not allege nor did he exhaust his administrative remedies prior to filing the petition. In fact, no evidence was filed that Santana had even initiated the administrative process.

The lower court did not issue an order to show cause and therefore, the Department did not file a response.

On June 30, 2008, the Fourteenth Judicial Circuit, Jackson County, entered an Order Dismissing Petition for Writ of Habeas Corpus because

Santana had failed to first exhaust his administrative remedies. In addition, the court properly dismissed the petition as to any sentencing issue because the lower court did not have jurisdiction to review a sister court's sentencing order.

Santana filed a Notice of Appeal on August 6, 2008 followed by his Initial Brief. In his Initial Brief, Santana alleged that the lower court abused its discretion and violated his rights of due process by dismissing his Petition for Writ of Habeas Corpus, regardless of the fact that he failed to first exhaust his administrative remedies. Santana also stated that the circuit court erred by denying his Motion for Rehearing and Reconsideration "without even looking at it."

The Department filed its Response arguing that prior to seeking judicial scrutiny, a petitioner must first exhaust his administrative remedies if such remedies are available. See Fisher v. Moore, 789 So.2d. 431 (Fla. 4<sup>th</sup> DCA 2001)(circuit court properly dismissed inmate's petition for writ of habeas corpus for failure to exhaust administrative remedies); Florida Dep't of Agriculture and Consumer Services v. City of Pompano Beach, 792 So.2d 539 (4<sup>th</sup> DCA 2001)(when administrative remedies are available, the petitioner must first exhaust the administrative remedies before seeking review in the courts); See Detwiler v. Moore, 758 So.2d 1290 (Fla. 4<sup>th</sup> DCA

2000); See Denmark v. Singletary, 722 So.2d 969 (Fla. 4<sup>th</sup> DCA 1999)(trial court properly dismissed inmate's gain-time challenge because inmate failed to exhaust his administrative remedies); See Chapter 33, Fla. Admin. Code.

On May 29, 2009, the First District Court issued an opinion reversing and remanding with directions that the court issue an order for the Department to file a response. The court identified the issue as "whether the habeas court properly dismissed the petition on its own motion without hearing from the authorities alleged to hold the petitioner unlawfully. We are not concerned here with mere conditions of confinement." The district court held that the trial court erred by dismissing the petition due to a "technicality" (the failure to first exhaust his administrative remedies) that was not raised by the parties. In the opinion, the court observed that the Department had not raised the issue of exhaustion in the circuit court. The reason the Department did not raise the issue was because the Department was not ordered to respond. It was not because the Department chose not to assert the affirmative defense. Had an order to show cause been issued, the Department certainly would have raised the affirmative defense of exhaustion.

The Department timely filed a Motion for Stay Issuance of a Mandate and Notice to Invoke Discretionary Jurisdiction on June 12, 2009. On June

17, 2009, the First District Court denied the Motion to Stay. The Department then filed a Motion to Stay with the Florida Supreme Court on June 18, 2009 which is pending.

### **SUMMARY OF THE ARGUMENT**

In this case, the First District Court of Appeal held that a trial court is prohibited from dismissing a writ of habeas corpus due to a “technicality” (the exhaustion of administrative remedies) that was not raised by the parties. In other words, for a petition to be dismissed based on failure to exhaust, a party, such as the Department, must assert the defense. The court can no longer do so on its own.

This decision cannot be reconciled with Pope v. State, 898 So.2d 253 (Fla. 3d DCA 2005) and Grace v. State, 3d 1290 (Fla. 4<sup>th</sup> DCA 2009). Thus, the First District’s decision in the instant case directly and expressly conflicts with decisions of its sister courts.

### **JURISDICTIONAL STATEMENT**

The Florida Supreme Court has discretionary jurisdiction to review a decision of a district court of appeal that expressly and directly conflicts with a decision of the supreme court or another district court of appeal on the same point of law. Art. V, Section 3(b)(3), Fla. Const.; Fla. R.App.P. 9.030(a)(2)(a)(iv). The conflict between decisions “must appear within the

four corners of the majority decision.” See Reaves v. State, 485 So.2d 829, 830 (Fla. 1986). One way to establish the conflict is to show that the decisions are irreconcilable. See Crossley v. State, 596 So.2d 447, 449 (Fla. 1992)(conflict of decisions existed where the court below “reached the opposite result on controlling facts which, if not virtually identical, more strongly dictated” the result reached by the alleged conflict case).

In the instant case, the First District Court’s decision expressly and directly conflicts and is irreconcilable with the decisions of the Third District Court in Pope and the Fourth District Court in Grace.<sup>1</sup> The First District’s opinion in the instant case acknowledged the conflict with Pope. Therefore, this court has discretionary jurisdiction.

## ARGUMENT

**THE DECISION OF THE FIRST DISTRICT COURT OF APPEAL IN THIS CASE EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISIONS OF THE THIRD DISTRICT COURT IN POPE V. STATE, 898 So.2d 253 (FLA. 3<sup>rd</sup> DCA 2005) AND THE FOURTH DISTRICT COURT IN GRACE V. STATE, 3 So.3d 1290 (FLA. 4<sup>th</sup> DCA 2009).**

The First District Court of Appeal held that the circuit court cannot summarily dismiss petitions of writ of habeas corpus for failure to exhaust administrative remedies. The issue must be raised by a party before the court

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<sup>1</sup> Although the First District Court did not mention Grace in its opinion, the case is being included in this brief due to its relevance.



can rule on it. The First District Court interpreted the requirement of exhaustion as a “technicality” and a “nicet[y] of the procedure.”

This interpretation directly conflicts with the high deference given to this affirmative defense by both the Third District in Pope and the Fourth District in Grace.

In Pope, without addressing the merits, the trial court summarily and correctly denied the inmates petition for writ of habeas corpus because the inmate had failed to allege or prove that he had first exhausted his administrative remedies. The Third District Court affirmed the trial court’s order noting:

The trial court was never informed by Appellant that he did attempt to exhaust his administrative remedies. Therefore the trial court was never in a position to determine whether or not the administrative remedies had been exhausted and, if so, to then address the petition on its merits.

See Pope at 254.

Thus, the Third District Court recognized and supported the trial court’s authority to rule on the administrative exhaustion issue without first requesting a response. In addition, the court noted the requirement that inmate’s are to assert and demonstrate that they have exhausted their administrative remedies.

The Fourth District Court of Appeal also endorsed the trial court’s

authority to rule on the exhaustion issue *sua sponte*. In Grace v. State, the district court affirmed the trial court's summary denial of the inmate's 3.850 motion for post-conviction relief. Grace at 1290. The trial court denied the motion because the inmate had failed to first exhaust his administrative remedies. In his motion, the inmate had alleged that if the Department had correctly calculated his sentence, the inmate would have completed serving his sentence. The court stated: "Nothing in his motion demonstrates that he has exhausted his administrative remedies with the department." Id. Hence, the Fourth District upheld a trial court's authority to rule on the issue of exhaustion on its own in a action where the inmate claims he is entitled to immediate release. The court also noted the absence of any evidence of exhaustion in the motion. Id.

Accordingly, the Department contends that the decision of the First District Court expressly and directly conflicts with the decisions of the Third District Court in Pope and the Fourth District Court in Grace. In fact, the First District Court of Appeal certified conflict with Pope.<sup>2</sup>

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<sup>2</sup>Of note, conflict also appears to exist within the First District Court itself. Santana and Timothy Brinson, another inmate housed in the same institution as Santana, filed separate petitions for writ of habeas corpus with the Fourteen Judicial Circuit, Jackson County, both filed on June 24, 2008. The petitions appear to be duplicates except for the insertion of case-specific details. Both appear to be written with the same or similar hand. The Department was not ordered to respond in either case. Both cases were

Without the Florida Supreme Court deciding the matter, the circuit courts, when reviewing petitions for writ of habeas corpus, will be bound by conflicting law. The circuit courts within the First District can no longer *sua sponte* dismiss a petition for writ of habeas corpus due to failure to exhaust administrative remedies without first obtaining a response from the Department (the custodial party).

By contrast, the circuit courts within the Third and Fourth Districts may continue to freely and independently exercise their judicial wisdom to discern whether an inmate has properly asserted and exhausted his administrative remedies. See Pope; See Grace.

This court should review this issue so that there is uniformity among the circuits. In addition, the courts and the Department need clarity on whether inmates are still required to exhaust their administrative remedies in an action alleging their entitlement to release.

## CONCLUSION

This court has discretionary jurisdiction to review the decision below,

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dismissed at the trial court level due to the inmate's failure to exhaust administrative remedies. Both cases were appealed to the First District Court, however, on June 5, 2009, Case number 1D08-3857, the First DCA per curiam affirmed the lower court's holding in Timothy Brinson v. Mark Henry, Warden, Florida Dept of Corrections, No. 1D08-3857 (Fla. 1<sup>st</sup> DCA June 5, 2009). By contrast, on May 29, 2009, the First District Court reversed and remanded the instant case.

and the court should exercise that jurisdiction to decide: (1) whether a court can *sue sponte* dismiss a petition for writ of habeas corpus for failure to exhaust administrative remedies, and (2) whether an inmate must first assert and prove exhaustion prior to filing his habeas petition.

Respectfully submitted,

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Tallahassee, FL 32399-2500  
(850) 488-2326 phone; (850) 922-4355 fax

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to **Runner Santana DC # 540154**, Graceville Correctional Facility, 5168 Ezell Road, Graceville, FL 32440 this 22nd day of June 2009.

/Beverly Brewster\_\_\_\_\_

**CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that this brief is submitted in times new Roman fourteen point font in accordance with the Florida Rules of Appellate Procedure.

/Beverly Brewster

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Fla. Department of Corrections,

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Case number 1D08-3852

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing  
has been furnished by U.S. Mail to **Runner Santana DC # 540154**,  
Graceville Correctional Facility, 5168 Ezell Road, Graceville, FL 32440 and  
a courtesy copy to **The Honorable Brantley S. Clark, Jr.**, Fourteenth  
Judicial Circuit, Jackson County, P. O. Box 400, Marianna, Florida 32447-  
0400 this 22nd day of June 2009.

/Beverly Brewster