

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v.

WARREN STANG,

Respondent.

Case No.

DCA No. 2D08-3536

JURISDICTIONAL BRIEF OF PETITIONER

BILL MCCOLLUM
ATTORNEY GENERAL

ROBERT J. KRAUSS
Chief-Assistant Attorney General
Bureau Chief, Tampa Criminal Appeals
Florida Bar No. 0238538

SARA MACKS
Assistant Attorney General
Florida Bar No. 0019122
Concourse Center 4
3507 E. Frontage Road, Suite 200
Tampa, Florida 33607-7013
(813)287-7900
Fax (813)281-5500

COUNSEL FOR PETITIONER

TABLE OF CONTENTS

	<u>PAGE NO.</u>
TABLE OF CITATIONS.....	ii
STATEMENT OF THE CASE AND FACTS.....	1
SUMMARY OF THE ARGUMENT.....	3
ARGUMENT.....	3
 <u>WHETHER THE SECOND DISTRICT COURT OF APPEAL'S DECISION IN STANG V. STATE, 2D08-3536 (FLA. 2D DCA JULY 31, 2009) EXPRESSLY AND DIRECTLY CONFLICTS WITH STATE V. MANCINO, 714 SO. 2D 429 (FLA. 1998), STATE V. MCBRIDE, 848 SO. 2D 287 (FLA. 2003) AND BAKER V. STATE, 878 SO. 2D 1236, (FLA. 2004).</u>	
CONCLUSION.....	10
CERTIFICATE OF SERVICE.....	10
CERTIFICATE OF FONT COMPLIANCE.....	10

TABLE OF CITATIONS

PAGE NO.

Cases

<u>Alachua Reg'l Juv. Det. Ctr. v. T.O.</u> 684 So. 2d 814 (Fla. 1996)	6,7
<u>Baker v. State</u> 878 So. 2d 1236 (Fla. 2004)	i,3,5,6,9
<u>Chojnowski v. State</u> 705 So. 2d 915 (Fla. 2d DCA 1997)	4
<u>Columbro v. State</u> 777 So. 2d 1208 (Fla. 5th DCA 2001)	5
<u>Denson v. State</u> 775 So. 2d 288 (Fla. 2000)	8
<u>Fla. Parole & Prob. Comm'n v. Baker</u> 346 So. 2d 640 (Fla. 2d DCA 1977)	8
<u>Knox v. State</u> 873 So. 2d 1250 (Fla. 5th DCA 2004)	8
<u>Murray v. Regier</u> 872 So. 2d 217 (Fla. 2004)	6,7
<u>N & L Auto Parts Co. v. Doman</u> 117 So. 2d 410 (Fla. 1960)	4
<u>P.N.R. v. Beacon Prop. Mgmt.</u> 842 So. 2d 773 (Fla. 2003)	4
<u>Stang v. State</u> 937 So. 2d 1170 (Fla. 4th DCA 2006)	1
<u>Stang v. State</u> 976 So. 2d 656 (Fla. 4th DCA 2008)	1,3
<u>Stang v. State</u> 2D08-3536 (FLA. 2D DCA JULY 31, 2009)	i,3
<u>State v. Mancino</u> 714 So. 2d 429 (Fla. 1998)	i,3,4,9

<u>State v. McBride</u>	
848 So. 2d 287 (Fla. 2003)	i,3,7,9
<u>Williamson v. State</u>	
765 So. 2d 89 (Fla. 1st DCA 2000)	5

Statutes and Rules

Art. V, § 3(b)(3), Fla. Const.....	3
Fla. R. App. P. 9.210(a)(2).....	10
Fla. R. Crim. P. 3.800(a).....	3,4,5,7,8
Fla. R. Crim. P. 3.850.....	passim

STATEMENT OF THE CASE AND FACTS

This case originated out of Palm Beach County. In 2000, Respondent pled guilty to 24 counts of racketeering, fraud and money laundering. Stang v. State, 937 So. 2d 1170, 1171 (Fla. 4th DCA 2006). He was sentenced to 5 years imprisonment followed by 3 years probation. Id. In 2005, Respondent violated his probation and was sentenced to 27 years in prison. Id. Respondent appealed his violation of probation, and the Fourth District Court of Appeal affirmed. Id. at 1172.

Respondent then filed a postconviction motion pursuant to Rule 3.850. That motion was denied by the court in Palm Beach County, and Respondent appealed. Stang v. State, 976 So. 2d 656 (Fla. 4th DCA 2008). The Fourth District denied all of Respondent's claims except one: the appellate court remanded for the lower court to consider Respondent's claim of incorrect credit for time served on the merits. Id. On remand, the Palm Beach County court ordered the State to respond to the claim. The State responded that only 1,915 days in total were awarded at sentencing, not 1,915 days for each count, as Respondent was claiming. The court denied the credit for time served claim.

In 2007, Respondent filed a habeas petition in Okeechobee County. Respondent claimed that he was not receiving the correct amount of credit for time served. This petition was dismissed for failing to exhaust his administrative remedies

with the Department of Corrections. In June 2008, Respondent filed a habeas petition in Hardee County. Respondent again claimed that amount of credit for time served awarded was incorrect. On July 14, 2008, the Hardee County court denied the petition because: 1) the complaint was properly addressed administratively by the Department of Corrections and 2) habeas corpus is not the appropriate remedy when a postconviction motion may be filed.

On July 18, 2008, Respondent filed a petition for writ of certiorari to the Second District Court of Appeal alleging that the Hardee County court incorrectly denied his habeas petition. The Second District converted the certiorari petition into a habeas petition; the court granted the petition and ordered Respondent's immediate release. The court held that Respondent was entitled to habeas relief because: 1) the sentencing court did not have jurisdiction to amend the sentence when an appeal was pending, 2) the sentencing court could not amend the sentence when Respondent was not present, and 3) an amended sentence removing jail credit violated double jeopardy. In response, the State filed a motion to stay and a motion for rehearing. The Second District temporarily granted the stay. The court then denied the motion for rehearing, removed the stay and filed a new opinion on July 31, 2009.

SUMMARY OF THE ARGUMENT

This Court has jurisdiction in the instant case because the Second District Court of Appeal's decision expressly and directly conflicts with decisions of this Court.

The Second District Court's opinion is in direct and express conflict with State v. Mancino, 714 So. 2d 429 (Fla. 1998), which authorizes collateral postconviction attack of credit for time served issues, through Rule 3.800(a) or Rule 3.850, State v. McBride, 848 So. 2d 287 (Fla. 2003), which bars subsequent postconviction filings on the same issue based on collateral estoppel, and Baker v. State, 878 So. 2d 1236 (Fla. 2004), which clarifies that postconviction motions, not habeas petitions, are the only relief available for collateral attacks of judgment or sentences.

ARGUMENT

WHETHER THE SECOND DISTRICT COURT OF APPEAL'S DECISION IN STANG V. STATE, 2D08-3536 (FLA. 2D DCA JULY 31, 2009) EXPRESSLY AND DIRECTLY CONFLICTS WITH STATE V. MANCINO, 714 SO. 2D 429 (FLA. 1998), STATE V. MCBRIDE, 848 SO. 2D 287 (FLA. 2003) AND BAKER V. STATE, 878 SO. 2D 1236, (FLA. 2004).

The Florida Constitution, article V, section 3(b)(3), authorizes this Court to review a decision of a district court of appeal that expressly and directly conflicts with a decision of this Court or another district court of appeal. The purpose

of this type of discretionary jurisdiction is to reduce conflicts in the law to an absolute minimum and to attempt to unify decisions of the appellate courts. N & L Auto Parts Co. v. Doman, 117 So. 2d 410, 412 (Fla. 1960). This Court has a constitutional responsibility to resolve conflicts and ensure consistent application of the law, especially when a court's opinion contravenes numerous other decisions. P.N.R. v. Beacon Prop. Mgmt., 842 So. 2d 773, 777 (Fla. 2003).

Respondent, through a Rule 3.850 motion in Palm Beach County, a habeas petition in Okeechobee County, a habeas petition in Hardee County and a habeas petition in the Second District, raised the issue of credit for time served. This Court, in Mancino v. State, held that claims of credit for time served could be filed through Rule 3.800(a) motions when court records reflect entitlement to the credit. 714 So. 2d 429, 430 (Fla. 1998). Even so,

[R]ule 3.800(a) is far from an adequate tool to review most jail credit errors. Many, if not most, jail credit issues do not appear on the face of the record available to the trial court. ... [R]ule 3.850 currently provides the best procedure for a prisoner to resolve jail credit issues because it allows for a sworn pleading and the orderly resolution of factual disputes relating to sentencing.

Mancino, 714 So. 2d at 431 (quoting Chojnowski v. State, 705 So. 2d 915, 918 (Fla. 2d DCA 1997)). After Mancino, a defendant

could raise issues of credit for time served under Rule 3.800(a) or Rule 3.850. See Columbro v. State, 777 So. 2d 1208 (Fla. 5th DCA 2001) (finding that the defendant needed to raise his claim as a 3.850 motion instead of a 3.800(a) motion because it required an evidentiary hearing); Williamson v. State, 765 So. 2d 89 (Fla. 1st DCA 2000) ("A jail credit error may be corrected pursuant to rule 3.800(a) or rule 3.850.").

Claims of incorrect credit for time served are claims available for postconviction motions and not claims available through habeas corpus relief. The Second District's opinion conflicts with this Court's case law. This Court has held that habeas corpus relief is not available when postconviction motion relief is available.

In Baker v. State, this Court clarified the limits on habeas relief in postconviction proceedings. 878 So. 2d 1236 (Fla. 2004). This Court outlined the history of rule 3.850 and explained how postconviction motions replaced habeas corpus for collateral attacks of judgments or sentences. Id. at 1239-44. Habeas corpus should not be used as a substitute for postconviction motions and should not be used to litigate issues that could have been, or were raised, on direct appeal or in postconviction motions. Id. at 1241.

We must, however, take this opportunity to remind those convicted of noncapital crimes in this state that, with limited exceptions,

ruled 3.850 is the mechanism through which they must file collateral postconviction challenges to their convictions and sentences. ... The remedy of habeas corpus is not available in Florida to obtain the kind of collateral postconviction relief available by motion in the sentencing court pursuant to rule 3.850.

Id. at 1245.

In its opinion, the Second District cites two cases for the limit on habeas corpus jurisdiction, Alachua Reg'l Juv. Det. Ctr. v. T.O., 684 So. 2d 814 (Fla. 1996) and Murray v. Regier, 872 So. 2d 217 (Fla. 2004). In Alachua Reg'l, a juvenile pretrial detention case, this Court found that habeas jurisdiction was "limited to whether the court that entered the order was without jurisdiction to do so or whether the order is void or illegal. The reviewing court may not discharge the detainee if the detention order is merely defective, irregular or insufficient in form or substance." 684 So. 2d at 816. The Second District failed to recognize that Alachua Reg'l did not have the same jurisdictional limitations that occur in postconviction criminal cases because of the pretrial context. In fact, this Court explicitly recognized the inapplicability of Alachua Reg'l to postconviction cases: "This opinion should not be construed to supplant the requirements of Florida Rule of Criminal Procedure 3.850(h)[.]" Id. at 816 n.4. In Murray, the respondent was being held pretrial during a civil commitment

case, and there were also no jurisdictional limitations similar to postconviction cases. 872 So. 2d at 219. This Court recognized that Rule 3.850 had “completely superseded habeas corpus” yet habeas remained a viable option for pretrial detention. Id. at 222. By citing to Alachua Reg’l and Murray, the Second District ignored this Court’s precedent on collateral postconviction motions and habeas petitions, choosing instead to cite case law on more expansive habeas jurisdiction.

Similarly, in the Second District’s opinion, it ignored this Court’s precedent on collateral estoppel. In total, Respondent has argued his credit for time served issue four times in four different courts: 1) 3.850 in Palm Beach County, 2) habeas petition in Okeechobee County,¹ 3) habeas petition in Hardee County and 4) certiorari petition/habeas petition in the Second District. The Second District’s opinion, although recognizing that Respondent previously argued his time served issue, ignored this Court’s case law on collateral estoppel.

In State v. McBride, this Court established that the doctrine of collateral estoppel applies to all successive postconviction motions, even Rule 3.800(a). 848 So. 2d 287, 290-91 (Fla. 2003). Because collateral estoppel applies when

¹ The State acknowledges that the Second District did not include this habeas petition in its opinion although the order from Okeechobee County was part of Respondent’s appendix below.

the same issue is litigated by the same parties, this Court held that collateral estoppel barred defendants from rearguing the same issue in Rule 3.800(a) motions that had already been argued in prior motions. Id. at 291. The only exception to the rule of collateral estoppel is manifest injustice. Id. at 291-92. The rules barring successive motions also bar successive habeas petitions. See Denson v. State, 775 So. 2d 288 (Fla. 2000) (applying res judicata to bar a successive habeas petition with a prior postconviction motion); Knox v. State, 873 So. 2d 1250 (Fla. 5th DCA 2004) (applying collateral estoppel to bar a habeas petition with a prior writ of mandamus and a prior appeal of parole commission decision); Fla. Parole & Prob. Comm'n v. Baker, 346 So. 2d 640 (Fla. 2d DCA 1977) (holding that a second, successive habeas petition should be denied if it contains the same subject matter and was previously denied).

The Second District recognized that Palm Beach County had ruled on the credit for time served issue in a Rule 3.850 motion. Yet, the Second District ignored the law on collateral estoppel and proceeded to rule on the same issue. The Second District also recognized that Hardee County had already ruled on the same habeas petition. Yet, the Second District ignored the law against successive bars and ruled on the same habeas petition as Hardee County. By ignoring the law on collateral estoppel, the Second District created conflict with this Court's

precedent.

By ignoring and conflicting with this Court's decisions in Mancino, Baker and McBride, the Second District's opinion disregards precedent and usurps the power of its sister courts. As highlighted in Baker, the postconviction system is centered around the court best suited to hear claims, the original sentencing court. For example, the sentencing court can hold evidentiary hearings and has easier access to the witnesses; the clerk's office retains the full court record; the prosecutor and defense counsel are often within its jurisdiction.

Thus, this Court has been explicit: when collaterally attacking a judgment or sentence, a defendant must file a postconviction motion not a habeas petition. Once a sentence is final, almost every claim is an attack on the judgment or sentence. If defendants are allowed to file habeas petitions to evade the postconviction motion system, any control gained by that system will be lost. The Second District's opinion ignores and conflicts with this Court's precedent that attempted to maintain control over the burden placed on the courts by postconviction filings. The impact of this decision will increase court case loads through an increased number of habeas petitions. The burden this decision will place on courts is exactly what postconviction motions were designed to prevent.

CONCLUSION

Petitioner respectfully requests that this Court accept jurisdiction in this case.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. mail to Warren Stang, #644917, Dade Correctional Institution, 19000 Southwest 377th Street, Florida City, Florida 33034-6409, this ___ day of August, 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,

**BILL McCOLLUM
ATTORNEY GENERAL**

ROBERT J. KRAUSS
Chief-Assistant Attorney General
Bureau Chief-Tampa Crim. Appeals
Florida Bar No. 0238538

SARA MACKS
Assistant Attorney General
Florida Bar No. 19122
Concourse Center 4
3507 E. Frontage Road, Suite 200
Tampa, Florida 33607-7013
Telephone: (813)287-7900
Facsimile: (813)281-5500
COUNSEL FOR PETITIONER