

IN THE SUPREME COURT OF FLORIDA

FILED
THOMAS D. HALL

CASE NO. SC09-1554
DCA CASE NO. 3D09-380

2009 OCT 22 A 10:39
CLERK, SUPREME COURT

BY _____

GREGORY PONTON,
Petitioner,

– vs –

STATE OF FLORIDA,
Respondent.

ON PETITIONER DISCRETIONARY REVIEW
FROM THE DISTRICT COURT OF APPEAL OF
FLORIDA, THIRD DISTRICT

BRIEF OF PETITIONER ON JURISDICTION

Gregory Ponton, DC #067776
In Proper Person,
Avon Park Correctional Institution
P.O. Box 1100
Avon Park, Florida 33826-1100

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INTRODUCTION

The Petitioner, Gregory Ponton, was the Defendant in the trial court and the appellant in the Third District Court of Appeal.

The State of Florida was the prosecution in the trial court and the Appellee in the Third District Court of Appeal. The parties shall be referred to as Petitioner and respondent in this brief. The symbol "App." Refers to the appendix in this brief, containing a conformed copy of the opinion of the Third District Court of Appeals in the instant case.

STATEMENT OF THE CASE AND FACTS

The petitioner appealed his conviction and sentence in proceeding under *Anders v. California*, 386 U.S. 738 (1967). *Ponton v. State*, 744 So.2d 1009 (Fla.3rd Dist. 2000) (Table), review dismissed, 761 So.2d 330 (Fla. 2000).

Petitioner the filed his initial motion for postconviction relief under Rule 3.850 of the Florida Rules of Criminal Procedure. In the motion, Petitioner raised forty-two claims. The trial court denied relief without prejudice. An appeal was taken and the appellate court affirmed. *Ponton v. State*, 756 So.2d 1018 (Fla.3rd Dist. 2000). Petitioner filed a second postconviction motion pursuant to Rule 3.850, raising forty-two claims and an amended motion raising forty-nine claims. The trial court denied the motion and Petitioner appealed. The Third District Court of Appeal affirmed.

On May 16, 2007, the petitioner submitted his *pro se* motion to correct illegal sentence. The motion was filed with the trial court on May 20, 2008. In chambers, on June 11, 2008, the trial court issued a written order denying Petitioner's motion.

An appeal was filed with the Third District Court of Appeal. The Third District Court of Appeal reversed the trial court's order. *Ponton v. State*, 990 So.2d 609 (Fla. 3rd Dist. 2008).

On December 5, 2008, the trial court issued a written order granting in part and denying in part Petitioner's motion to correct illegal sentence.

An appeal was filed and the Third District Court of Appeal affirmed. *Ponton v. State*, 2009 WL 2382350 (Fla. 3rd Dist. 2009).

Petitioner filed a motion for suggestion of certification with the district court. On September 23, 2009, the District Court denied Petitioner's motion for suggestion of certification.

An appeal was timely filed with this Court on August 17, 2009.

On October 7, 2009, the court treated Petitioner's notice of appeal as a notice to invoke discretionary jurisdiction. Petitioner was ordered by this Court to serve the initial brief on jurisdiction on or before October 22, 2009.

QUESTION PRESENTED

WHETHER THE THIRD DISTRICT COURT OF APPEAL'S DECISION IN *PONTON V. STATE*, 2009 WL 2382350 (Fla. 3rd Dist. 2009), EXPRESSLY AND DIRECTLY CONFLICTS WITH *RUTHERFORD V. STATE*, 820 So.2d 407 (Fla. 2nd Dist. 2002) ON THE SAME QUESTION OF LAW?

SUMMARY OF THE ARGUMENT

Petitioner's contention that the Third District Court of Appeal improperly affirmed the denial of his Rule 2.800(a) motion and determined that the Second District has an internal conflict of decisions. The Third District is mistaken that there is no sequential conviction requirement for an adjudication as an HVFO.

That being said, there is an express and direct conflict on the facts or this question of law, and jurisdiction should be granted. *Tedder v. State*, 34 Fla.L.Weekly S368 (2009).

ARGUMENT

THE THIRD DISTRICT COURT OF APPEAL'S DECISION IN *PONTON V. STATE*, 2009 WL 2382350 (Fla. 3rd Dist. 2009) ON THE ISSUE OF SEQUENTIAL CONVICTION REQUIREMENT FOR AN ADJUDICATION AS AN HABITUAL VIOLENT FELONY OFFENDER.

Discretionary jurisdiction of this Honorable Court may be exercised to review, among other matters, decisions of district courts of appeal which expressly and directly conflict with a decision of this court or of another district court of appeal on the same question of law. *Tedder v. State*, 34 Fla.L.Weekly S368 (2009)

Article V, Section 3(b)(3), Fla. Const.; Fla.R.App.P. 9.030 (a)(2)(A)(iv).

Petitioner contends that the conflict arose with *Williams v. State*, 898 So.2d 966 (Fla. 3rd Dist. 2005), because the Second District Court of Appeal reversed an order denying a postconviction motion on grounds that there is no sequential conviction requirement for an adjudication as an HVFO. *Rutherford v. State*, 820 So.2d 407 (Fla. 2nd Dist. 2002). On appeal, Petitioner relied on *Rutherford v. State*, 820 So.2d 407 (Fla. 2nd Dist. 2002). There was no brief submitted by the office of the Attorney General. The Third District upon its own independent analysis and conclusion of law applied *Williams v. State*, 898 So.2d 966 (Fla. 3rd Dist. 2005).

This cause has been submitted to the court on jurisdiction under Article V, Section 3(b), Florida Constitution. The Court has jurisdiction. *See* Art. V, § 3(b)(3) - (4), Fla. Const., *Jollie v. State*, 405 So.2d 418 (Fla. 1981).

In *Tedder v. State*, 34 Fla.L.Weekly S368 (2009), the Florida Supreme Court stated:

The Supreme Court [of Florida ...[M]ay review any decision of a District Court of Appeal that ...expressly and directly conflicts with a decision of another District Court of Appeal or of the Supreme Court [of Florida] on the same question of law.

Petitioner has demonstrated that discretionary review of this Honorable Court may be invoked pursuant to the standard of review requiring that an express and direct

conflict exist between the decisions of district courts of appeal on the same question of law. In this case, the Third District is in obvious conflict with the Second District. In Petitioner's motion for suggestion of certification, Petitioner went on to cite *Wainer v. State*, 798 So.2d 885 (Fla. 4th Dist. 2001). Wainer was sentenced as habitual violent felony offender. Wainer sought relief from sentence. The District Court of Appeal held that Wainer's 10 prior convictions entered on same date in same sentencing proceeding did not qualify as sequential prior convictions. The Third District failed to dictate that 775.084 and *Bover v. State*, 979 So.2d 1246, 1250 (Fla. 2001) indicates that there is no sequential conviction requirement for an adjudication as a habitual violent felony offender. The Florida Supreme Court should order the clerk of the Third District Court of Appeal.

Pursuant to Florida Rule of Appellate Procedure 9.140 (f)(4), this Court must order the Third District to provide Petitioner or appointed counsel a copy of all filings, including the record on appeal. As noted, Petitioner is presently incarcerated and has been proceeding *pro se*.

Per this Court's Administrative order, dated October 7, 2009, Petitioner was directed to transmit a copy of all an electronic format.

The Florida Supreme Court shall order the Clerk of the Third District Court of Appeal to file the original record which shall be properly indexed and paginated within 20 days. Petitioner should be allowed 20 days to submit his brief on the merits.

CONCLUSION

WHEREFORE, the Petitioner respectfully requests that jurisdiction be granted as there is an express and direct conflict between the Third District Court and the Second District Court on the same question of law.

Respectfully Submitted,

/s/ Gregory Ponton

Gregory Ponton, DC # 067776

In Proper Person

Avon Park Correctional Institution

P.O. Box 1100

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CERTIFICATE OF SERVICE

I HERBY CERTIFY that a true and correct copy of the foregoing Brief of Petitioner on Jurisdiction was mailed via the U.S. Postal Service to:

Office of the Attorney General
Department of Legal Affairs
Riverside Plaza, Suite 950
444 Brickell Ave,
Miami, Florida 33131

Thomas D. Hall, Clerk,
Supreme Court of Florida
500 South Duval Street
Tallahassee, Florida 32399

This 19th day of October, 2009.

/s/ Gregory Ponton

Gregory Ponton, DC # 067776

In Proper Person

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC09-1554
DCA CASE NO.3D09-380

GREGORY PONTON,
Petitioner,

– vs –

STATE OF FLORIDA,
Respondent.

APPENDIX

Petitioner provides this Court with the following items:

1. Copy of the Third District Court of Appeal opinion.
2. Copy of the Third District Court of Appeal order denying Petitioner Motion for Suggestion of Certification.

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Third District Court of Appeal

State of Florida, July Term, A.D. 2009

Opinion filed August 5, 2009.
Not final until disposition of timely filed motion for rehearing.

No. 3D09-380
Lower Tribunal No. 96-6548

Gregory Ponton,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal under Florida Rule of Appellate Procedure 9.141(b)(2) from the
Circuit Court for Miami-Dade County, Reemberto Diaz, Judge.

Gregory Ponton, in proper person.

Bill McCollum, Attorney General, for appellee.

Before COPE, LAGOA, and SALTER, JJ.

PER CURIAM.

This is an appeal of an order denying, in part, a motion to correct illegal sentence under Florida Rule of Criminal Procedure 3.800(a). On point one, we affirm as to the consecutive sentences as a habitual violent felony offender (HVFO) on counts fifteen and sixteen on authority of Spratling v. State, 672 So. 2d 54 (Fla. 1st DCA 1996).

In point three, the defendant relies on Rutherford v. State, 820 So. 2d 407 (Fla. 2d DCA 2002). As to that case, we have previously explained that the Second District apparently has an internal conflict of decisions. There is no sequential conviction requirement for an adjudication as an HVFO. Williams v. State, 898 So. 2d 966 (Fla. 3d DCA 2005). We affirm on point three under authority of Williams. We affirm as to the remaining claims without comment.

Affirmed.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JULY TERM, A.D. 2009
SEPTEMBER 23, 2009

GREGORY PONTON,

CASE NO.: 3D09-380

Appellant(s)/Petitioner(s),

vs.

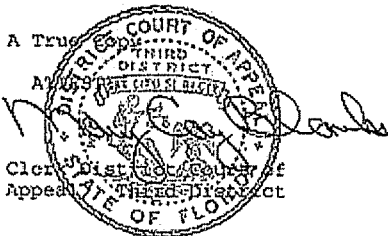
LOWER

THE STATE OF FLORIDA,

TRIBUNAL NO. 96-6548

Appellee(s)/Respondent(s).

Upon consideration, appellant's suggestion for certification is denied. COPE, LAGOA and SALTER, JJ., concur.



cc:
Gregory Ponton
Bill McCollum

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