IN THE SUPREME COURT OF FLORIDA

CARLOS CROMARTIE,

Petitioner,

Case No. SC09-1868

v.

STATE OF FLORIDA,

Respondent.

ON DISCRETIONARY REVIEW OF THE DECISION
OF THE FIRST DISTRICT COURT OF APPEAL

JURISDICTIONAL BRIEF OF RESPONDENT

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PRELIMINARY STATEMENT

Respondent, the State of Florida, the respondent in the District Court of Appeal (DCA) and the prosecuting authority in the trial court, will be referenced in this brief as Respondent, the prosecution, or the State. Petitioner, Carlos Cromartie, the petitioner in the DCA and the defendant in the trial court, will be referenced in this brief as Petitioner or by proper name.

"PJB" will designate Petitioner's Jurisdictional Brief. That symbol is followed by the appropriate page number.

A bold typeface will be used to add emphasis. Italics appeared in original quotations, unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

The State rejects Petitioner’s statement of the case and facts as improper. For purposes of whether there is express and direct conflict of opinions justifying the invocation of this Court’s jurisdiction, the only relevant facts are those stated within the four corners of the opinion under review. See Reaves v. State, 485 So. 2d 829, 830 (Fla. 1986)(stating that conflict must be express and direct and must be apparent from the four corners of the decisions under review).

As reported by the First District Court of Appeal in Cromartie v. State, 16 So. 3d 882, 883 (Fla. 1st DCA 2009), the facts under review for purposes of whether there is express and direct conflict of opinions justifying the invocation of this Court's jurisdiction are as follows:

> We find merit in Appellant's argument that the trial judge's stated policy of mechanically rounding up a prison sentence to the nearest whole number (in this case, from 7.83 years to 8 years originally and from 6.16 years to 7 years on resentencing) without any reflection on the individual merits of a particular defendant's case is arbitrary and consequently a denial of due process. Yet we are constrained to AFFIRM as the argument was not raised contemporaneously. See Jackson v. State, 983 So.2d 562 (Fla. 2008); Brown v. State, 994 So.2d 480 (Fla. 1st DCA 2008).

Given the First District's very brief statement of the facts in this opinion, the State sought rehearing and reconsideration in light of the other record evidence. The State's motion was denied.

SUMMARY OF ARGUMENT

Because Cromartie and Hannum do not involve substantially the same controlling facts requiring the same outcome or holding, Petitioner has failed to establish express and direct conflict between the First District's decision or holding in Cromartie and the Second District's decision or holding in Hannum.

ARGUMENT

ISSUE I

WHETHER THIS COURT HAS JURISDICTION TO REVIEW THE FIRST DISTRICT COURT OF APPEAL'S DECISION IN CROMARTIE V. STATE, 16 So. 3d 882, 883 (Fla. 1st DCA 2009), ON THE BASIS THAT IT CONFLICTS WITH THE SECOND DISTRICT'S DECISION IN HANNUM V. STATE, 13 So. 3d 132 (Fla. 2D DCA 2009) (Restated).

In his petition for review, Petitioner contends that this Court has jurisdiction to review the First District Court of Appeal's decision in Cromartie v. State, 16 So. 3d 882, 883 (Fla. 1st DCA 2009), on the basis that Cromartie expressly and directly conflicts with the Second District Court of Appeal's decision in Hannum v. State, 13 So. 3d 132 (Fla. 2d DCA 2009), specifically asserting that the First District failed to conduct a fundamental error analysis on a due process sentencing error, whereas the Second District did.

In order to establish express and direct conflict of opinions, the Petitioner must establish that the decision of the First District Court of Appeal in this case is in express and direct conflict with a decision from another district court of appeal or a decision from this Court. FLA. CONST. art. V, § 3(b)(3); see also Little v. State, 206 So. 2d 9, 10 (Fla. 1968). Conflict must be express and direct and must be apparent from

the four corners of the decisions under review. Reaves v. State, 485 So. 2d 829, 830 (Fla. 1986). As explained by this Court,

> [T]he principal situations justifying the invocation of our jurisdiction to review decisions of Court of Appeal because of alleged conflicts are, (1) the announcement of a *rule of law* which conflicts with a rule previously announced by this Court, or (2) the application of a rule of law to produce a different result in a case which involves substantially the same controlling facts as a prior case disposed of by this Court. . . . Under the second situation the controlling facts become vital and our jurisdiction may be asserted only where the Court of Appeal has applied a recognized rule of law to reach a conflicting conclusion in a case involving substantially the same controlling facts as were involved in allegedly conflicting prior decisions of this Court. Florida Power & Light Co. v. Bell, Fla.1959, 113 So.2d 697.

Nielsen v. City of Sarasota, 117 So. 2d 731, 734 (Fla. 1960); followed and quoted by Wallace v. Dean, 3 So. 3d 1035, 1039 (Fla. 2009).

In this case, the holding in Cromartie does not conflict with the holding in Hammon, because the cases do not involve substantially the same controlling facts requiring the same outcome. In Cromartie, the four corners of the opinion reflect an unobjected-to due process sentencing error aimed at the trial court's allegedly arbitrary policy of rounding up the decimal point in a scoresheet sentence to the next year. In Hannum, the facts reflect a different and arguably more egregious

unobjected-to due process sentencing error aimed at the trial court's consideration of the defendant having maintained his innocence.

In Cromartie, the four corners of the opinion reflect that the unobjected-to alleged due process sentencing error claim was not preserved for review, and there is no mention in Cromartie of whether Cromartie asserted any claim on appeal that the alleged error rose to the level of fundamental error requiring that the First District conduct a fundamental error analysis. On the other hand, in Hannum, the Second District found that the trial court's consideration of Hannum's maintenance of his innocence rose to the level of fundamental error. However, the Second District also makes no mention in Hannum of whether Hannum asserted any claim on appeal that the alleged error rose to the level of fundamental error. Moreover, the Second District does not make any assertion in Hannum that appellate courts are required to review for fundamental error on appeal regardless of whether it is asserted. Thus, the inference is that the defendant in Cromartie did not assert fundamental error on appellate review whereas the defendant in Hannum perhaps did or the Second District simply believed the facts were so egregious that they reviewed for fundamental error anyway. In any event, these cases can be harmonized.

Even if this Court were to initially accept review of Cromartie and Hannum, upon further review of the record in Cromartie, this Court would likely discharge jurisdiction as there is absolutely no basis in the record for a fundamental error review. This Court would find that the record shows that the sentence imposed was a legal CPC scoresheet sentence which was imposed after the trial court considered individualized mitigating factors.

CONCLUSION

Based on the foregoing, because Cromartie and Hannum do not involve substantially the same controlling facts requiring the same outcome or holding, this Court does not have conflict jurisdiction.

SIGNATURE OF ATTORNEY AND CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to Michael Ufferman, Esq., Michael Ufferman Law Firm, P.A., 2022-1 Raymond Diehl Road, Tallahassee, FL 32308 by MAIL on November 6, 2009.

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the font requirements of Fla. R. App. P. 9.210.

Respectfully submitted and served,

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