IN THE SUPREME COURT OF FLORIDA

ROBERT RANSONE
Petitioner,

V.

Case No.: SC09-2084
Lower Tribunal No(s).: 4D09-316,
04-920CF10A

STATE OF FLORIDA
Respondent(s). /

PETITIONER'S JURISDICTIONAL BRIEF

ON REVIEW FROM THE DISTRICT COURT OF APPEAL,
FORTH DISTRICT
STATE OF FLORIDA

s/s
ROBERT RANSONE
Dade Correctional Institution
19000 S.W. 377th Street
Florida City, Florida 33034

TABLE OF CONTENTS

TABLE OF CITATIONS

Cases

Florida Statutes

Florida Rule of Appellate Procedures

Florida Constitution

STATEMENT OF THE CASE AND FACTS

The Petitioner in this case filed a motion for Post Conviction Relief seeking additional jail credit from the date he was arrested via an executed arrest warrant from Broward County while being detained in Miami-Dade County on unrelated charges.

The trial court adopted the states response and denied the motion finding it successive and further held that the arrest affidavit did not actually show that the warrant was executed.

An appeal was taken to the fourth District Court of Appeal and on October 21, 2009, the court invoked the tipsy coachman doctrine and entered an opinion certifying conflict with Tharpe v. State, 744 So. 2d. 1256 (Fla. 3rd DCA 1999) (See Appendix A). The court held that even though the Appellant received a sentence of time served on the unrelated Dade County charges, pursuant to §921.16(1) Fla. Stat. (2005) the sentence in Broward was consecutive to the previous sentence and therefore, the Petitioner was not entitled to pyramiding of additional jail credit. Id.

The Petitioner's notice to invoke discretionary jurisdiction of this was filed on October 28, 2009 and this brief on jurisdiction now follows.

SUMMARY OF THE ARGUMENT

In this case the district court of appeal held that although petitioner's first sentence had already expired prior to the imposition of the second sentence, pursuant to Fla. Stat. §921.16(1) Fla. Stat. (2005), the sentences were consecutive and therefore Petitioner was not entitled to additional jail credit. The court extended § 921.16(1) to apply to situations involving dual sentencing even when the first sentence is completed prior to the imposition of the second sentence.

This holding is in direct and express conflict with Tharpe v. State, 744 So. 2d. 1256 (Fla. 3rd DCA 1999) which held that because Tharpe's first sentence

had already expired prior to the imposition of the second sentence, there could have been no consecutive sentencing but rather, in reality, the sentences were concurrent. As such, Tharpe was entitled to an evidentiary hearing to determine whether he was arrested on the warrant and entitled to additional jail credit. Tharpe at 1257.

Because these holdings are in conflict, this court has discretionary jurisdiction to accept review and consider the merits of the Petitioner's argument.

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 question of law. Article V, §3(b)(3) Fla. const. (1980); Fla.R.App.P. 9.030(a)(2)(A)(iv)

ARGUMENT

> The decision of the forth District Court of Appeal in this case expressly and directly conflicts with the decision of the third district court in Tharpe v. State, 744 So. 2d. 1256 (Fla. 3RD DCA 1999)

The forth District Court of Appeal determined that although the Petitioner received a sentence of time served on his Miami-Dade charges, pursuant to §921.16(1) Florida Statutes, the later sentence imposed on the Broward violation of community control would be consecutive to the time served sentence. Therefore, Petitioner would not be entitled to additional jail credit, as outlined within Gethers

v. State, 838 So. 2d. 504 (Fla. 2003), because the sentences were not concurrent.[1] (See Appendix A)

This decision conflicts with Tharpe v. State, 744 So. 2d. 1256 (Fla. 3rd DCA 1999) which holds that a sentence cannot be imposed consecutively to a sentence that has already expired. Specifically, the Third District relied on this court's decision in Daniels v. State, 491 So. 2d. 543 (Fla. 1986) and held "the state reads the Daniel's decision to narrowly ... the reason the Daniel's decision draws a distinction between concurrent and consecutive sentencing is to avoid the pyramiding of credit in cases where sentences are severed consecutively. There were no consecutive sentences in this case." Tharpe at 1257.[2]

Like Tharpe, the Petitioner's sentences could not be consecutive because the first sentence was already expired prior to the imposition of the second sentence.

Because the Fourth Districts holding is in direct conflict with Tharpe, the Petitioner respectfully moves this court to grant review and resolve the conflicts by quashing the Fourth Districts' holding.

CONCLUSION

Because the Fourth District in this case certified conflict with the Third Districts' holding and because these two cases are in direct and express conflict, this court has discretionary jurisdiction to review the decision below. Based upon such, the Petitioner respectfully moves this Honorable Court to exercise that jurisdiction to consider the merits of the Petitioner's argument.

---

[1] The court also relied on this court's holding in State v. Mathews, 891 So. 2d. 479, 481 (Fla. 2004) which stands for the proposition that §921.16(1) Fla. Stat. (2005) mandates consecutive sentencing when the trial court fails to pronounce concurrent sentences. That holding however, did not deal with the broader issue presented herein, "Whether a sentence can be imposed consecutive to a sentence that has expired."

[2] Notably, both the Third and Fourth Districts' recognized that because the defendant's received time served on their first case, the trial court had no reason to determine whether the sentences would be concurrent.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and exact copy of the foregoing Jurisdictional Brief was placed in the hands of Prison Officials at Dade Correctional Institution for forwarding via U. S. Mail to: Office of the Attorney General, 1515 N. Flagler Drive, 9th Floor, West Palm Beach, Florida 33401, on this 4 day of January 2010.

Robert Ransome #184314
Dade Correctional Institution
19000 S.W. 377th Street
Florida City, Florida 33034

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the font requirements of the Rules Of Appellate Procedure, Rule 9.210 (a)(2).

/s/