IN THE SUPREME COURT OF FLORIDA

BRADLEY JAMES JACKSON,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Case No. SC09-2383

JURISDICTIONAL BRIEF OF RESPONDENT

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PRELIMINARY STATEMENT

Respondent, the State of Florida, the Appellant 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, Bradley James Jackson, the Appellee in the DCA and the defendant in the trial court, will be referenced in this brief as Petitioner or 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 pertinent history and facts are set out in the decision of the lower tribunal, attached in slip opinion form (hereinafter referenced as "slip op." at [page number]”). It also can be found at State v. Jackson, 22 So.3d 817 (Fla. 1st DCA 2009).

SUMMARY OF ARGUMENT

Petitioner asserts that the lower court has certified direct conflict of decision between its opinion entered below and that of the Third District Court of Appeal in State v. Williams, 20 So.3d 419 (Fla. 3d DCA 2009), State v. Davis, 997 So.2d 1278 (Fla. 3d DCA 2009), and State v. Berry, 976 So.2d 645 (Fla. 3d DCA 2008). The "four corners" of the DCAs' decisions, reveal no express and direct conflict with each other on the same point of law. The three conflict cases are factually and procedurally dissimilar to the case on appeal. Therefore, there is no express and direct conflict, and this Court should not exercise jurisdiction.

ARGUMENT

ISSUE I: IS THERE EXPRESS AND DIRECT CONFLICT BETWEEN THE DECISION BELOW AND STATE V. WILLIAMS, 20 SO.3D 419 (FLA. 3D DCA 2009), STATE V. DAVIS, 997 SO.2D 1278 (FLA. 3D DCA 2009), AND STATE V. BERRY, 976 SO.2D 645 (FLA. 3D DCA 2008)? (RESTATED)

Jurisdictional Criteria

The First District Court of Appeal reversed in State v. Jackson, 22 So.2d 817(Fla. 1st DCA 2009), holding that the trial court's failure to provide reasons sufficient to justify a departure sentence required reversal and remand for resentencing within the guidelines. The First District Court relied Pope v. State, 561 So.2d 554 (Fla. 1990)(citing Shull v. Dugger, 515 So.2d 748 (Fla. 1987)); State v. Owens, 848 So.2d 1199 (Fla. 1st DCA 2003); Jerry v. State, 19 So.3d 1167 (Fla. 1st DCA 2009) and State v. Dunn, 9 So.3d 666 (Fla. 1st DCA 2009). The First District certified conflict with State v. Williams, 20 So.3d 419 (Fla. 3d DCA 2009)(reversing and remanding "for resentencing to include written reasons" for downward departure); State v. Davis, 997 So.2d 1278 (Fla. 3d DCA 2009)(reversing a downward departure sentence for lack of written reasons, finding on remand "[t]his ruling does not preclude the imposition of a sentence that departs from the sentencing guidelines…."); and State v. Berry, 976 So.2d 645 (Fla. 3d DCA 2008)(noting a downward departure sentence without valid reason for departure must be remanded for resentencing, but finding "[t]he defendant suggests there is a valid reason for departure" which "can be raised in the trial court on remand.").

Petitioner contends that this Court has jurisdiction pursuant to Fla.

R. App. P. 9.030(a)(2)(A)(iv), which parallels Article V, § 3(b)(3), Fla. Const. The constitution provides:

> The supreme court ... [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 on the same question of law.

The conflict between decisions "must be express and direct" and "must appear within the four corners of the majority decision." Reaves v. State, 485 So. 2d 829, 830 (Fla. 1986). *Accord* Dept. of Health and Rehabilitative Services v. Nat'l Adoption Counseling Service, Inc., 498 So. 2d 888, 889 (Fla. 1986) (rejected "inherent" or "implied" conflict; dismissed petition). Neither the record, nor a concurring opinion, nor a dissenting opinion can be used to establish jurisdiction. Reaves, 485 So. 2d at 830; Jenkins v. State, 385 So. 2d 1356, 1359 (Fla. 1980)(“regardless of whether they are accompanied by a dissenting or concurring opinion”). Thus, conflict cannot be based upon "unelaborated per curiam denials of relief," Stallworth v. Moore, 827 So. 2d 974 (Fla. 2002).

In Ansin v. Thurston, 101 So. 2d 808, 810 (Fla. 1958), this Court explained:

> It was never intended that the district courts of appeal should be intermediate courts. The revision and modernization of the Florida judicial system at the appellate level was prompted by the great volume of cases reaching the Supreme Court and the consequent delay in the administration of justice. The new article embodies throughout its terms the idea of a Supreme Court which functions as a supervisory body in the judicial system for the State, exercising appellate power in certain specified areas essential to the settlement of issues of public importance and the preservation of uniformity of principle and practice, with review by the district courts in most instances being final and absolute.

Accordingly, the determination of conflict jurisdiction distills to whether the District Court's decision reached a result opposite State v. Williams, 20 So.3d 419 (Fla. 3d DCA 2009), State v. Davis, 997 So.2d 1278 (Fla. 3d DCA 2009), and State v. Berry, 976 So.2d 645 (Fla. 3d DCA 2008).

The decision below is not in "express and direct conflict" with State v. Williams, State v. Davis, and State v. Berry.

Petitioner maintains that because Williams, Davis and Berry have the same controlling material facts and the Third District reached an opposite result in all three cases, then the present case is in conflict. The State adamantly disagrees. By closely examining all of three opinions, it is clear that all three cases are factually and procedurally dissimilar to the present case; therefore, no express and direct conflict exists.

Beginning with State v. Berry, 976 So.2d 645 (Fla. 3d DCA 2008), the State offered a plea bargain for a downward departure sentence. Once this case was before the trial court, the defendant requested an even lower sentence than the State offered and the trial court accepted it. The State withdrew the plea bargain offer and objected to the downward departure sentence by the trial court. The Third District held, "[i]n the absence of a valid reason for downward departure, we are obligated to reverse and remand for resentencing consistent with the guidelines, or to permit the defendant to withdraw this plea." Id. at 645; citing State v. Green, 932 So.2d 365 (Fla. 3d DCA 2006)(the sentence is reversed and the cause remanded either to sentence defendant within the guidelines or to permit him to withdraw his plea.). The Third District stated, "[t]he defendant

suggests that there is a valid reason for downward departure. That issue can be raised in the trial court on remand." Id. However, the Third District did not cite to any authority for that proposition and left the interpretation open-ended.

On motion for rehearing, the Third District in State v. Davis, 997 So.2d 1278 (Fla. 3d DCA 2009), relied on their opinion in Berry. In Davis, the trial court entered into a plea with the defendant over the State's objection. Id. at 1278. The Third District reversed and remanded the case back to the trial court in order to vacate the judgment and sentence and allow the defendant to withdraw his plea. The Third District stated, "[t]his ruling does not preclude the imposition of a sentence that departs from the sentencing guidelines, and it supported by valid grounds for the departure." Id. at 1278-1279. The Third District seems to being implying that if a defendant is allowed to withdraw his plea and begin the trial process over, then the trial court can impose a downward departure sentence then; however this extremely short opinion doesn't clarify whether this means after the plea withdrawal or not.

In State v. Williams, 20 So.3d 419 (Fla. 3d DCA 2009), the Third District relied on Davis. In Williams, the defendant pled guilty in two separate cases. In one case, he was designated as a Habitual Felony Offender and the other case, he was designated as a Prison Releasee Reoffender. The trial court improperly downward departure in both cases. The Third District stated:

> As the defendant was sentenced to a lesser sentence under the habitual offender act without oral or written reasons for the

> downward departure, and as prison release under the act without the reoffender designations, we reverse the trial court's order and the cause is remanded for resentencing, to include written reasons for the departure and designations for habitual offender and prison release, or for withdrawal of the plea.

Id. at 421. The Third District just cited to a case that held that outcome that it wanted. The Berry and Davis opinions are completely dissimilar and distinguishable from Williams, and should have not been included in this certification.

The present case is factually and procedurally dissimilar and distinguishable from the cases that the First District certified conflict with. In Tasker, the State appealed the downward departure sentence. The trial court did not enter rewritten reasons. The First District reversed and remanded this case back to the trial court for resentencing within the guidelines. The Third District in Berry and Davis allowed the defendant to withdraw his plea or resentencing within the guidelines because the defendant entered into the plea in reliance on a sentencing agreement between the defendant and the trial court, to which the State objected. Under these circumstances resentencing within the guidelines may be an appropriate remedy. Implicitly, it appears that the Third District is instituting an exception by allowing defendants to withdraw their pleas when the trial court abused its discretion in both cases by heavily participating in plea negotiations with the defendants and with objections

from the State. [1] Nothing of the sort occurred in the present case, and it is clear that these cases are distinguishable from the present case.

CONCLUSION

Based on the foregoing discussions, the State respectfully requests this Honorable Court not to exercise jurisdiction.

[1] Both Berry and Davis appear to have violations of State v. Warner, 762 So.2d 507 (Fla. 2000).

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to the following by U.S. MAIL on January 29, 2010: Carl S. McGinnes, Assistant Public Defender, Leon County Courthouse, Suite 401, 301 South Monroe Street, Tallahassee, Florida, 32301.

CERTIFICATE OF COMPLIANCE

I certify that this brief was computer generated using Courier New 12 point font.

Respectfully submitted and certified,
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