

IN THE SUPREME COURT OF FLORIDA

BRADLEY JAMES JACKSON,

Petitioner,

v.

CASE NO. SC09-2383

STATE OF FLORIDA,

Respondent.

ON PETITION FOR DISCRETIONARY REVIEW
OF A DECISION OF THE DISTRICT COURT OF APPEAL
FIRST DISTRICT OF FLORIDA

PETITIONER'S BRIEF ON JURISDICTION

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IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Appellant/Cross-Appellee,

v.

CASE NO. SC09-2383

BRADLEY JAMES JACKSON,

Appellee/Cross-Appellant.

I. PRELIMINARY STATEMENT

Bradley James Jackson was the “defendant” in the trial court, and the “appellee” before the District Court of Appeal, First District of Florida. He will be referred to in this brief as “petitioner,” “defendant,” or his proper name.

Filed with this brief is an appendix containing a copy of the opinion issued by the district court in petitioner’s case, *State v. Jackson*, 34 FLW D2412 (Fla. 1st DCA Nov. 24, 2009).

II. STATEMENT OF THE CASE AND FACTS

The district court's opinion in *State v. Jackson* reveals that in petitioner's case, the trial court imposed a downward departure sentence, orally stating the reason for the departure was that petitioner was amenable to drug rehabilitation. No written departure order was filed.

On appeal by the state, the district court reversed, finding the sole orally stated reason, that petitioner was amenable to drug rehabilitation, ran afoul of *State v. Owens*, 848 So.2d 1203 (Fla. 1st DCA 2003) and Section 921.0026(2)(d), Florida Statutes (2008).

On appeal to the district court, petitioner argued that, on remand, the trial court may again impose a departure sentence, relying upon *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). In each of those cases, the third district remanded for resentencing, giving the trial court an opportunity to again impose a downward departure sentence on remand upon finding of a valid reason.

The district court rejected this argument, interpreting the Court's decisions in *Pope v. State*, 561 So.2d 554 (Fla. 1990) and *Shull v. Dugger*, 515 So.2d 748 (Fla. 1987) as requiring a sentence within the guidelines on remand, with no possibility of a downward departure sentence. In so doing, the district court certified "...conflict with *Williams*, *Berry*, and *Davis*, to the extent they conflict with this opinion." *Id.*

III. SUMMARY OF THE ARGUMENT

Since the length of the actual argument is within the page limitations for a summary of the argument, a formal summary will be omitted here.

IV. ARGUMENT

ISSUE PRESENTED:

THE DECISION OF THE DISTRICT COURT IN PETITIONER'S CASE, *STATE V. JACKSON*, WAS CERTIFIED TO BE IN DIRECT CONFLICT WITH THE THIRD DISTRICT'S DECISIONS IN *STATE V. WILLIAMS*; *STATE V. DAVIS*; AND *STATE V. BERRY* ON THE SAME QUESTION OF LAW, THUS CONFERRING DISCRETIONARY JURISDICTION PURSUANT TO ARTICLE V, SECTION (3)(b)(4), CONSTITUTION OF THE STATE OF FLORIDA, AND FLORIDA RULE OF APPELLATE PROCEDURE 9.030(a)(2)(A)(vi).

Both Article V, Section (3)(b)(4), Constitution of the State of Florida, and Florida Rule of Appellate Procedure 9.030(a)(2)(A)(vi), confer discretionary jurisdiction over a decision of a district court of appeal that is certified by it to be in direct conviction with a decision of another district court of appeal.

The district court in petitioner's case, *State v. Jackson*, expressly recognized in the opinion itself that its decision was in "...conflict with *Williams*, *Berry*, and *Davis*, to the extent they conflict with this opinion." *Id.* Thus, the Court has discretionary jurisdiction under Article V, Section (3)(b)(4) and Florida Rule of Appellate Procedure 9.030(a)(2)(A)(vi).

Petitioner further argues district court's recognition of conflict was correct. In *Nielsen v. City of Sarasota*, 117 So.2d 731 (Fla. 1969), reaffirmed in *Wallace v. Dean*, 3 So.3d 1035 (Fla. 2009), the Court observed it has jurisdiction over district court decisions having substantially the same controlling material facts as other decisions, but that reach opposite results.

In petitioner's case, a state appeal of a downward departure sentence, the district court invalidated the only oral reason given for the departure and then remanded for a guidelines sentence, with no further possibility of a downward

departure sentence on remand. The three cases in conflict, *Williams*, *Davis*, and *Berry*, were each state appeals of downward departure sentence. In each case, the third district found the initial grounds relied upon for the departure sentences imposed were legally invalid. But unlike the district court's decision on petitioner's case, the third district ruled that a downward departure sentence could be re-imposed on remand, provided a legally valid ground is presented to the trial court.

The decision in petitioner's case has the same controlling material facts that are present in *Williams*, *Davis*, and *Berry*, but reached the opposite result with respect to the possibility of a departure sentence on remand.

Thus, even if the district court had not expressly recognized conflict with *Williams*, *Davis*, and *Berry*, the Court would have discretionary "express and direct conflict" jurisdiction pursuant to Article V, Section (3)(b)(3), Constitution of the State of Florida, and Florida Rule of Appellate Procedure 9.030(a)(2)(A) (iv).

V. CONCLUSION

Petitioner requests the Court to accept jurisdiction and require briefing on the merits.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. mail to Heather Flanagan Ross, Assistant Attorney General, Counsel for the State, The Capitol, Tallahassee, FL 32399-1050, and Mr. Bradley Jackson, c/o Community Corr. Division, 451 Catherine Street, Jacksonville, FL 32202, on this ____ day of January, 2010.

CERTIFICATE OF FONT SIZE

I HEREBY CERTIFY that this brief has been prepared using Times New Roman 14 point font in compliance with font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

Respectfully submitted,
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