IN THE SUPREME COURT OF FLORIDA

CASE NO.: SC09-490

ROMAN RAMIREZ,

Petitioner,

v.

CHARLES H. McCRAVY,

Respondent,

_____/

JURISDICTIONAL BRIEF OF RESPONDENT, CHARLES H. McCRAVY
(On Discretionary Review from the Third District Court of Appeal)

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INTRODUCTION

The petitioner, Roman Ramirez, was the plaintiff in the trial court and the appellant in the third district court of appeal. The respondent, Charles H. McCravy, was the defendant in the trial court and the appellee in the third district court of appeal. In this brief, the petitioner will be referred to as "Ramirez" or petitioner, and respondent will be referred to as "McCravy" or respondent.

JURISDICTIONAL ARGUMENT

THE THIRD DISTRICT DECISION UNDER REVIEW DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH A DECISION OF ANOTHER DISTRICT COURT OF APPEAL OR OF THE SUPREME COURT ON THE SAME QUESTION OF LAW, THUS PRECLUDING DISCRETIONARY REVIEW BY THIS COURT.

Article V, section 3(b)(3), of the Florida Constitution and Florida Rule of Appellate Procedure 9.030(a)(2)(A)(iv), provide the Supreme Court with the discretion to review a 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." (Emphasis added). Unfortunately for petitioner, this criteria is not met, and there is no discretion for the supreme court to even consider review of the third district decision.[1]

In order to determine whether the third district decision expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law, we must first consider the legal rulings made by the third district court. To begin, the third district notes in the first sentence of its decision that Ramirez "appeals the trial court's final summary judgment in favor of defendant, Charles H. McCravy, raising **the novel argument** that prior hurricane-related administrative orders tolled the statute of limitations for

[1] Ramirez's jurisdictional brief focuses in part on the correctness of the third district court's ruling below. Of course, the propriety of the decision is not a consideration for the Supreme Court at this stage of jurisdictional briefing.

his tort action." Since the appeal involved a new or unusual argument, then the decision cannot expressly and directly conflict with any other decision.

The third district decision noted that "Article V, section 2, grants to the Florida Supreme Court the power to 'adopt rules for the practice and procedure in all court.'" The opinion then pointed out that section 95.051, Florida Statutes (2006), enumerated eight different, specific grounds for tolling limitations periods - none of which were applicable here. The opinion observed that Ramirez's late filing was not attributable to any of the six weather emergencies.

In the opinion the third district concluded that the Supreme Court's administrative

> orders should be strictly construed in the contexts of statutes, as opposed to rules. *See Sullivan v. State*, 913 So.2d 762 (Fla. 5th DCA 2005) and *State v. Hernandez*, 617 So.2d 1103 (Fla. 3d DCA 1993) (both dealing with the speedy trial rule). We reach this conclusion because the six administrative orders recite as its authority article V, section 2, of the Florida Constitution, which grants the Florida Supreme Court the power to 'adopt rules for the practice and procedure in all courts,' not to modify statutes. Furthermore, we have the Florida Supreme Court itself in *Hearndon* [*v. Graham*, 767 So.2d 1179 (Fla. 2000)] specifically declaring that by enumerating eight grounds in section 95.051, the legislature has basically precluded application of any other tolling provisions that imaginative litigants may come up with. To toll means to suspend or interrupt. There is nothing intrinsic in the language that requires tacking extra days at the end of a four year period. Therefore, by strictly construing the administrative orders, we find that they have no application to this case as the weather emergencies did not in any way delay Ramirez from promptly filing his suit.

In the opinion, the third district essentially ruled that it would give greater scrutiny to a Supreme Court administrative **order** that implicated a potential extension of a **statute** of limitations, as opposed to an extension of a time frame under a rule of **procedure**. In this regard, the ruling was in fact novel, as this legal issue was never considered in the cases that Ramirez suggests pose express and direct conflict. Significantly, the opinion specifically distinguished the *Sullivan* and *Hernandez* cases because those decisions involved the extension of a time frame in a procedural rule (speedy trial) and not the extension of a statute of limitations, for which the supreme court has not been provided such a constitutional grant of power.

For example, in *Sullivan*, the fifth district noted that during the time between Sullivan's arrest and the expiration of the speedy trial period, three administrative orders of the Supreme Court were entered wherein "all time limits authorized by rule and statute affecting the speedy trial procedure" were "tolled" in Seminole County due to hurricanes Charley, Frances and Jeanne for a cumulative tolling period of 15 days. *Id*. at 763. When the three tolling orders were considered, the notice of expiration of speedy trial was premature. *Id*. The State thus had the extra time to bring Sullivan to trial.

Unlike the third district opinion below, the fifth district in *Sullivan* never considered or ruled upon the legal impact of a Supreme Court administrative order

upon an attempt to extend a **statute** of limitations, as opposed to the extension of a time frame in a **procedural** rule such as speedy trial. One test of express and direct conflict is whether the decisions are irreconcilable. *Aravena v. Miami-Dade County*, 928 So.2d 1163 (Fla. 2006). There can be no conflict at all, and certainly no express and direct conflict, when *Sullivan* never reached the same legal question as the opinion below. Since the decisions are easily reconcilable, there is no express and direct conflict.

Similarly, in *Hernandez*, the State appealed the discharge of a criminal defendant following the State's failure to bring the defendant to trial within 10 days of an August 18, 1992 trial court order to do so. On August 24, 1992, Hurricane Andrew stormed through South Florida. As a result, the Supreme Court issued an order tolling "all time limits authorized by rule and statute affecting the speedy trial procedure in criminal and juvenile proceedings beginning August 24, 1992, for two weeks." *Id*. at 1103.

As explained by the third district in *Hernandez*, this order tolled the running of the speedy trial window period in the case. Thus, "five days of the 10-day window had elapsed prior to August 24th, and the window was tolled from August 24th through September 6th. Thereafter, the window resumed running on September 7th. Clearly, only eight days of the window period had elapsed when

the defendant was discharged on September 9th. His discharge was, therefore, premature and is reversed." *Id.* at 1103.

Hernandez, like *Sullivan*, never even considered (or ruled upon) the legal impact of a Supreme Court administrative order upon an attempt to extend a **statute** of limitations, as opposed to the extension of a time frame in a **procedural** rule such as speedy trial. Therefore, there can be no conflict between *Hernandez* and the opinion below because *Hernandez* never reached the same question of law as the opinion below.[2]

In addition, as a decision of the third district, the *Hernandez* decision cannot legally serve as a basis for Supreme Court jurisdiction. As noted, Rule 9.030(a)(2)(A)(iv), provides the Supreme Court the discretion to review "decisions of district courts of appeal that expressly and directly conflict with a decision of **another** district court of appeal or of the supreme court on the same question of law." Thus, even if there were any legal conflict between *Hernandez* and the

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[2] Moreover, in both *Hernandez* and *Sullivan*, the appellate courts extended the deadline (by the extra time in the tolling orders) for a party to complete its obligations within the required time. These obligations simply could not otherwise be completed because of the hurricane's disruption of the court system. Both decisions were consistent with respondent's position that the orders were meant to alleviate temporary difficulties caused by hurricanes or storms that **temporarily impeded** the ability of counsel or the parties to meet court deadlines. Neither decision suggests that a party may use these types of tolling orders to excuse a failure to timely file a claim years after the emergencies have passed.

opinion below (and there is not), it would only constitute intra-district conflict and could not form the basis for conflict review by the Supreme Court.

Finally, petitioner suggests that the third district opinion below conflicts with the supreme court's opinion in *Hankey v. Yarian*, 755 So.2d 93 (Fla. 2000). However, there is no conflict between the decisions. Unlike the third district opinion below, *Hankey* never even considered whether a supreme court administrative order can extend the statute of limitations.

As the Supreme Court explained in *Hankey*, "[a]t issue is the calculation of the statutory time limitations for filing a medical malpractice action under chapter 766 of the Florida Statutes. Specifically, the question is whether the ninety-day 'tolling' period under section 766.106(4), Florida Statutes, plus any other extension agreed to by the parties as provided for under that subsection, *suspends* the running of the two-year statutory limitation period for filing suit. . . . We conclude that the tolling period provided by section 766.106(4) does interrupt and suspend the running of the limitations period."

Hankey thus interpreted the medical malpractice **statute** and the tolling provisions contained in that act. The decision never addressed the novel questions of law ruled upon by the third district opinion below. There is no conflict whatsoever. While *Hankey* interpreted the tolling provision in the medical malpractice **statute** liberally (to further its purpose), the third district decision

below interpreted the Supreme Court **administrative order** strictly insofar as it purported to extend a **statute** of limitations. Because Hankey never dealt with the same question of law, there can be no express and direct conflict between the cases.

CONCLUSION

For these reasons, the third district decision below does not expressly and directly conflict with a decision of another district court of appeal or of the Supreme Court on the same question of law. Accordingly, there is no jurisdiction for this court to review the third district decision below.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 3rd day of April, 2009 to: Marlene S. Reiss, Esq., P.A., Two Datran Center, Suite 1612, 9130 South Dadeland Blvd., Miami, FL 33156 and Bernard H. Butts, Jr., Esq., Bernard H. Butts, Jr., P.A., 1790 W 49th Street, Suite 210, Hialeah, FL 33012.

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the font requirements of Rule 9.210(a)(2). This brief is submitted in Times New Roman 14 point font.

By: _____
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