IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. SC08-941

CLARENCE DENNIS,

Petitioner,

- versus -

STATE OF FLORIDA,

Respondent.

RESPONDENT'S BRIEF ON JURISDICTION

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Preliminary Statement

Petitioner was the Defendant and Respondent was the Prosecution in the Criminal Division of the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida. Petitioner was Appellant and Respondent was Appellee in the District Court of Appeal of Florida, Fourth District. In this brief, the parties shall be referred to as they appear before this Honorable Court except that Respondent may also be referred to as the State.

Statement Of The Case And Facts

Noting that in determining jurisdiction, this Court is limited to the facts apparent on the face of the opinion, Hardee v. State, 534 So. 2d 706, 708 n.1 (Fla. 1988), Respondent presents the following:

Petitioner appealed his conviction and sentence for felony battery to the Fourth District Court of Appeal. Petitioner contended on appeal that the trial court erred when it denied his motion to dismiss on his claim of statutory immunity brought pursuant to § 776.032, Fla. Stat., because there were disputed issues of material fact. Dennis v. State, 34 Fla. L. Weekly D 537 (Fla. 4th DCA March 11, 2009).

The Fourth District issued a written opinion, affirming Petitioner's conviction and sentence, which, in total, stated as follows:

> Clarence Dennis appeals his conviction and sentence for felony battery. He raises two issues on appeal, and we affirm as to both issues. Only one of the issues warrants discussion; that is, whether the trial court erred in denying Dennis's motion to dismiss on his claim of statutory immunity brought under section 776.032, Florida Statutes, because there were disputed issues of material fact. We find no error in the trial court's decision to deny the motion to dismiss. As we recognized in Velasquez v. State, 34 Fla. L. Weekly D266 (Fla. 4th DCA Feb. 2, 2009), a motion to dismiss based on statutory immunity is properly denied where there are disputed issues of material fact. Accordingly, we affirm.

Dennis v. State, 34 Fla. L. Weekly D 537 (Fla. 4th DCA March 11, 2009).

However, the Fourth District subsequently granted Petitioner's motion for certification of conflict and certified conflict with an opinion from the First District. The Fourth District's opinion states, in total, as follows:

> Clarence Dennis filed a Motion for Rehearing and/or Certification of Conflict and/or Motion for Clarification. We deny the motion for rehearing and/or clarification. We certify conflict with the decision of the First District Court of Appeal in Peterson v. State, 983 So. 2d 27 (Fla. 1st DCA 2008).

Dennis v. State, 2009 Fla. App. LEXIS 5436 (Fla. 4th DCA May 20, 2009). Based on this certification of conflict, Petitioner seeks review of the decision of the Fourth District Court of Appeal.

Summary Of The Argument

This Court does not have jurisdiction to review the instant case. The decision of the Fourth District Court of Appeal in the instant case does not expressly and directly conflict with the decision of the First District Court of Appeal in Peterson v. State, 983 So. 2d 27 (Fla. 1st DCA 2008). Therefore, this Court should not review the case at bar and should dismiss Petitioner's case.

Argument

THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL IN THE INSTANT CASE IS NOT IN DIRECT CONFLICT WITH THE DECISION OF THE FIRST DISTRICT COURT OF APPEAL IN PETERSON V. STATE, 983 So 2d 27 (Fla. 1st DCA 2008).

The Fourth District Court of Appeal has certified that its decision in Dennis v. State, 2009 Fla. App. LEXIS 5436 (Fla. 4th DCA May 20, 2009), conflicts with the decision of the First District Court of Appeal in Peterson v. State, 983 So. 2d 27 (Fla. 1st DCA 2008).

Article V, § 3(b)(3) of the Florida Constitution restricts this Court's review of a district court of appeal's decision only if it expressly conflicts with a decision of another district court of appeal. It is not enough to show that the district court's decision is effectively in conflict with other appellate decisions. However, this Court's jurisdiction to review the Fourth District's decision in this case may be invoked by either the announcement of a rule of law which conflicts with a law previously announced by this Court or another district court of appeal or by the application of a rule of law to produce a different result in a case which involves substantially the same facts as a prior case. Mancini v. State, 312 So. 2d 732, 733 (Fla. 1975).

The term "expressly" requires some written representation or expression of

the legal grounds supporting the decision under review. See Jenkins v. State, 385 So. 2d 1356 (Fla. 1980). A decision of a district court of appeal is no longer reviewable on the ground that an examination of the record would show that it is in conflict with another appellate decision; it is reviewable if the conflict can be demonstrated from the district court of appeal's opinion itself. The district court of appeal must at least address the legal principles which were applied as a basis for the decision. See Ford Motor Co. v. Kikis, 401 So. 2d 1341, 1342 (Fla. 1981).

When determining whether conflict jurisdiction exists, this Court is limited to the facts which appear on the face of the opinion. Hardee v. State, 534 So. 2d at 708, n.1; White Constr. Co. v. Dupont, 455 So. 2d 1026 (Fla. 1984). In the past, this Court has held that it would not exercise its discretion where the opinion below established no point of law contrary to the decision of this Court or of another district court of appeal. The Florida Star v. B.J.F., 530 So. 2d 286, 289 (Fla. 1988). "'Conflict between decisions must be express and direct, i.e., it must appear within the four corners of the majority decision.' In other words, inherent or so called 'implied' conflict may no longer serve as a basis for this Court's jurisdiction." State, Department of Health v. National Adoption Counseling Service, Inc., 498 So. 2d 888, 889 (Fla. 1986) (quoting Reaves v. State, 485 So. 2d 829, 830 (Fla. 1986)). See also School Board of Pinellas County v. District Court

of Appeal, 467 So. 2d 985, 986 (Fla. 1985).

In this case, the Fourth District certified conflict with the First District's opinion in Peterson v. State, 983 So. 2d 27 (Fla. 1st DCA 2009). The Fourth District merely set forth the nature of Petitioner's claim: that the trial court erred in denying his motion to dismiss. The opinion also states that Petitioner was claiming statutory immunity based on § 776.032, Fla. Stat.[1] The Fourth District also included the fact that the trial court denied the motion because there were disputed issues of material fact. Citing to its prior opinion in Velasquez v. State, 34 Fla. L. Weekly D266 (Fla. 4th DCA Feb 2, 2009), the Court then held that "a motion to dismiss based on statutory immunity is properly denied when there are disputed issues of material fact." In its subsequent opinion on rehearing, the Fourth District merely certified conflict with the First District's opinion in Peterson v. State, 983

[1] The "Stand Your Ground" statute provides:

> A person who uses force as permitted in s. 776.012, s. 776.013, or s. 776.031 is justified in using such force and is immune from criminal prosecution and civil action for the use of such force, unless the person against whom force was used is a law enforcement officer, as defined in s. 943.10(14), who was acting in the performance of his or her official duties and the officer identified himself or herself in accordance with any applicable law or the person using force knew or reasonably should have known that the person was a law enforcement officer. As used in this subsection, the term "criminal prosecution" includes arresting, detaining in custody, and charging or prosecuting the defendant.

§ 776.032(1), Fla. Stat. (2007).

So. 2d 27 (Fla. 1st DCA 2008). The Fourth District utterly failed to address the legal principles which were applied as a basis for the decision, as required by this Court's opinion in Ford Motor Co. v. Kikis, 401 So. 2d 1341, 1342 (Fla. 1981). Instead, it merely cited to its prior opinion in Velasquez. Therefore, to ascertain whether there is conflict between the Fourth District's opinion in the case at bar and that of the First District in Peterson, this Court would be required to review the Fourth District's opinion in Velasquez. Thus, the conflict cannot be demonstrated from the Fourth District's opinion itself.

Therefore, based upon this failure, there cannot possibly be conflict between the districts. Accordingly, this Court should decline to review the lower court's decision in this case.

Conclusion

WHEREFORE, based on the foregoing argument and authorities, Respondent respectfully submits that this Court should decline to grant review in the above-styled cause.

Respectfully submitted,

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Certificate Of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to Barbara J. Wolfe, Esquire, Assistant Public Defender, Criminal Justice Building, Sixth Floor, 421 Third Street, West Palm Beach, Florida, 33401, this ____ day of June, 2009.

_____
HEIDI L. BETTENDORF
Assistant Attorney General

Certificate Of Type Size And Style

In accordance with Fla. R. App. P. 9.210(a)(2), Respondent hereby certifies that the instant brief has been prepared with Times New Roman 14 point font.

_____
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