

IN THE SUPREME COURT OF FLORIDA

CLARENCE DENNIS

Petitioner,
vs.

STATE OF FLORIDA

Respondent.

F.S. Ct. CASE NO. _____

DCA CASE NO. 4D07-3945

PETITIONER'S JURISDICTIONAL BRIEF

On Review from the District Court of Appeal,
Fourth District, State of Florida

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STATEMENT OF THE CASE AND FACTS

On October 1, 2007, Petitioner was sentenced to five years in the Department of Corrections, following a jury verdict, in which he was convicted of felony battery.

Petitioner appealed to the Fourth District Court of Appeal.

The Fourth District affirmed, finding no error in the trial court's decision to deny the motion to dismiss. Citing *Velasquez v. State*, 34 Fla. L. Weekly D266 (Fla. 4th DCA Feb. 2, 2009), the Court held that a motion to dismiss based on statutory immunity is properly denied when there are disputed issues of material fact. *Dennis v. State*, 34 Fla. L. Weekly D537 (Fla. 4th DCA March 11, 2009).

On May 20, 2009, The Fourth District certified 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*, WL 1393485 (Fla. 4th DCA May 20, 2009).

Petitioner filed his Notice of Intent to Invoke Discretionary jurisdiction on May 22, 2009.

SUMMARY OF THE ARGUMENT

The Fourth District has certified conflict with *Peterson v. State*, 983 So.2d 27 (Fla. 1st DCA 2008).

In the instant case, the Fourth District affirmed the trial court's denial of the motion to dismiss, citing *Velasquez v. State*, 34 Fla. L. Weekly D266 (Fla. 4th DCA Feb. 2, 2009), which holds that a motion to dismiss based on statutory immunity is properly denied when there are disputed issues of material fact. *Dennis v. State*, 34 Fla. L. Weekly, D537 (Fla. 4th DCA March 11, 2009).

This opinion is in express and direct conflict with *Peterson v. State*, 983 So.2d 27 (Fla. 1st DCA 2008), which holds that the court may not deny a motion simply because factual disputes exist. . . . "We reject any suggestion that the procedure established by rule 3.190(c) should control, so as to require denial of a motion whenever a material issue of fact appears."

In its opinion of May 20, 2009, the Fourth District certified conflict with *Peterson v. State*, 983 So.2d 27 (Fla. 1st DCA 2008). *Dennis v. State*, WL 1393485 (Fla. 4th DCA May 20, 2009).

Because the Fourth District Court of Appeal has certified conflict with another District Court on the same issue of law, this Court has jurisdiction. This court should accept that jurisdiction and review this case.

ARGUMENT

THE DISTRICT COURT’S OPINION HAS CERTIFIED CONFLICT WITH THE OPINION OF ANOTHER DISTRICT COURT.

This Court has two grounds upon which it may exercise discretionary jurisdiction to review this case:

First, this Court has discretionary jurisdiction to review a decision of a District Court of Appeal which expressly and directly conflicts with a decision of this Court or another District Court of Appeal. Art. V, § 3(b)(3), Fla. Const. “The constitutional standard is whether the decision of the District Court, on its face, collides with a prior decision of this Court, or another District Court, on the same point of law, so as to create an inconsistency or conflict among precedents.” *Kincaid v. World Insurance Co.*, 157 So.2d 517, 518 (Fla. 1963).

Second, pursuant to Art. V, § 3(b)(4), Fla. Const., this Court may review cases in which a District Court has certified a direct conflict with the decision of another District Court, on the same issue of law.

In the instant case, the Fourth District affirmed the trial court’s denial of the motion to dismiss, citing *Velasquez v. State*, 34 Fla. L. Weekly D266 (Fla. 4th DCA Feb. 2, 2009), which holds that a motion to dismiss based on statutory immunity is properly denied when there are disputed issues of material fact. *Dennis v. State*,

34 Fla. L. Weekly, D537 (Fla. 4th DCA March 11, 2009).

This opinion is in express and direct conflict with *Peterson v. State*, 983 So.2d 27 (Fla. 1st DCA 2008), which holds:

“We now hold that when immunity under the law is properly raised by the defendant, the trial court must decide the matter by confronting and weighing only factual disputes. The court may not deny a motion simply because factual disputes exist We reject any suggestion that the procedure established by rule 3.190(c) should control, so as to require denial of a motion whenever a material issue of fact appears.”

In it’s opinion of May 20, 2009, the Fourth District has certified conflict in the instant case, with the decision of the First District in *Peterson v. State*, 983 So.2d 27 (Fla. 1st DCA 2008). *Dennis v. State*, WL 1393485 (Fla. 4th DCA May 20, 2009).

Because the decision in this case expressly and directly conflicts with *Peterson*, and because the Fourth District Court of Appeal has certified conflict with *Peterson*, this Court has jurisdiction. This Court should accept that jurisdiction and review this case.

CONCLUSION

Petitioner respectfully requests that this Court accept review of the instant case and order briefs on the merits.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of the Jurisdictional Brief has been furnished to Heidi Bettendorf, Assistant Attorney General, 1515 North Flagler Drive, 9th Floor, West Palm Beach, Florida 33401, by U.S. Mail, this _____ day of May, 2009.

BARBARA J. WOLFE
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