

IN THE SUPREME COURT OF FLORIDA

ERIC EDENFIELD,
Petitioner,
v.
STATE OF FLORIDA,
Respondent.

CASE NO. SC10-2146

JURISDICTIONAL BRIEF OF RESPONDENT

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PRELIMINARY STATEMENT

Respondent, the State of Florida, the respondent in the District Court of Appeal (DCA), the appellee in the circuit court acting in its appellate capacity, and the prosecuting authority in the county court, will be referenced in this brief as Respondent the or the State. Petitioner, ERIC EDENFIELD, the petitioner in the DCA, the appellant in the circuit court, and the defendant in the county court, will be referenced in this brief as Petitioner.

"PJB" will designate Petitioner's Jurisdictional Brief.

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 as Appendix A. *Edenfield v. State*, 45 So.3d 26 (Fla. 1st DCA 2010). The court below gave an extremely detailed account of the video Petitioner was shown regarding his constitutional rights, the written plea form Petitioner signed, Petitioner's appearance before the court at which time he waived counsel and entered a plea of no contest to driving under the influence, Petitioner's motion to withdraw his plea, and his appeal of the denial of that motion to the circuit court. *Edenfield* at 27-29.

SUMMARY OF ARGUMENT

None of the actual decisions in any of the cases Petitioner identifies directly and expressly conflicts with the actual decision in the case below. Each of them involved a waiver of counsel that bore no resemblance to the waiver of counsel involved here. Some involved waiver of counsel for trial or revocation hearing rather than plea, some involved a denial of a waiver of counsel, and all involved clearly deficient information to the defendant before accepting or rejecting a waiver of counsel. Even if the alleged conflict cases mentioned that a court accepting the waiver of counsel must ask certain questions of the defendant, the actual holdings do not conflict because the waiver-of-counsel inquiries in those cases were clearly insufficient, whereas the waiver-of-counsel inquiry in the case below clearly was not. Accordingly, Petitioner has failed to demonstrate any direct and express conflict of decisions.

ARGUMENT

ISSUE

IS THERE DIRECT AND EXPRESS CONFLICT BETWEEN
THE DECISION BELOW AND THE EIGHT CASES
PETITIONER IDENTIFIES IN HIS BRIEF?
(Restated)

Petitioner contends that this Court has jurisdiction pursuant to Article V, § 3(b)(3), Fla. Const., which 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)(rejecting "inherent" or "implied" conflict).

In addition, it is the "conflict of *decisions*, not conflict of *opinions* or *reasons* that supplies jurisdiction for review by certiorari." *Jenkins v. State*, 385 So.2d 1356, 1359 (Fla. 1980). Accordingly, the determination of conflict jurisdiction distills to whether the district court's decision below reached a result opposite those in the decisions Petitioner identifies.

Petitioner waived counsel and entered a plea of no contest to driving under the influence after a video presentation detailing various constitutional rights, including the right to

counsel and the dangers and disadvantages of proceedings without counsel; an acknowledgment that the present defendants, including Petitioner, heard and understood the presentation; a plea form Petitioner signed that, among other things, explained his right to counsel; a waiver of counsel form; a personal acknowledgment from Petitioner to the court that he understood everything in the plea form; a personal offer of counsel from the court; and an oral refusal of counsel from Petitioner. *Edenfield* at 27-29. Moreover, because Petitioner moved to withdraw his plea, there were further findings regarding Petitioner's understanding of the consequences of his waiver of counsel. *Id.* at 29.

None of the actual decisions in any of the cases Petitioner identifies directly and expressly conflicts with the actual decision in the case below.¹ Each of them involves a waiver of counsel that bore no resemblance to the waiver of counsel involved here. Some involved waiver of counsel for trial or revocation hearing rather than plea, some involved a denial of a waiver of counsel, and all involved clearly deficient information to the defendant before accepting or rejecting a waiver of counsel. Even if the alleged conflict cases mentioned that a

¹In addition to the eight district court of appeal cases Petitioner claims directly and expressly conflict with the decision below, Petitioner further claims that the decision below "misapplies" four of this Court's decisions. While the State denies that the DCA misapplied these cases, "misapplication" is not a basis for this Court's jurisdiction; only direct and express conflict. Because Petitioner has not alleged direct and express conflict with regard to these cases, the State will not address them further in this brief.

court accepting the waiver of counsel must ask certain questions of the defendant, the actual holdings do not conflict because the waiver-of-counsel inquiries in those cases were clearly insufficient, whereas the waiver-of-counsel inquiry in the case below clearly was not. Accordingly, Petitioner has failed to demonstrate any direct and express conflict of decisions.

For instance, in *Curtis v. State*, 32 So.3d 759, 761 (Fla. 2d DCA 2010), the court noted that the defendant was not "advised ... of the disadvantages and dangers of self-representation." In contrast, Petitioner here was given detailed advice about the benefits of securing counsel before entering a plea:

After his arrest, Edenfield appeared at a first appearance hearing in the County Court where a pre-recorded video advised everyone present about the various constitutional rights they enjoyed as criminal defendants. The video specifically stated each defendant had "the right to be represented by an attorney today and at each stage of the proceeding." It also described the right to self-representation, pointing out some of the risks of self representation and some of the advantages of being represented by an attorney:

While you have the right to be represented by an attorney, the constitution also gives you the right to represent yourself and waive the right to the assistance of an attorney; however, there are some disadvantages in representing yourself. Some of the ways having a lawyer can help are as follows: A lawyer's legal knowledge of criminal law, criminal procedure, rules of evidence, and experience, may favorably affect bail and pretrial release possibilities; a lawyer's help may result in obtaining information about the case through the use of discovery; a lawyer can uncover potential violations of constitutional rights and take effective measures to address them; a lawyer may ensure compliance with speedy trial and statute of

limitations provisions; and may identify and secure favorable evidence to be introduced later at trial on your behalf; a lawyer has the experience to advise you as to whether entering a plea is in your best interest; and might be able to negotiate with the State to bargain for different sentences or dispositions for your case; a lawyer can tell you the advantages and disadvantages of what you might say to the judge during your plea hearing and sentencing that will follow.

Edenfield at 27-28. The DCA further noted that the county court judge also ensured that the present defendants saw the video and understood the rights explained. *Id.* Accordingly, any case where the trial court accepted a waiver of counsel without advising the defendant of the disadvantages and dangers of self-representation cannot conflict with the decision below, because such advice was given to Petitioner in detail. See Fla. R. Crim. P. 3.111(d)(2).

In *Neeld v. State*, 729 So.2d 961 (Fla. 2d DCA 1999), the trial court improperly *refused* to allow the defendant to represent himself because the request for self-representation was made "too late." Because the court did not conduct a *Faretta* inquiry at all, the parts of the opinion setting forth the requirements for a valid *Faretta* inquiry were necessarily *dicta*. Because the issue in *Neeld* was not whether a waiver of counsel was voluntary, the decision there cannot conflict with the decision below.

Montgomery v. State, 1 So.3d 1228 (Fla. 2d DCA 2009), involves clearly deficient waiver-of-counsel inquiry where the court gave no advice whatsoever about the disadvantages and dangers of self-representation, dismissing them as matters that

"everyone knows" and were "obvious." *Id.* at 1230. As in *Curtis*, this fact alone constitutes a critical distinction between this case and Petitioner's case. The State agrees that a waiver-of-counsel inquiry that fails to include this advice is insufficient; as such, *Montgomery* cannot conflict with the case at bar.

Like *Neeld*, *Rodriguez v. State*, 982 So.2d 1272 (Fla. 3d DCA 2008), involves a trial court simply refusing a request for self-representation without any inquiry *at all* into the defendant's understanding of the consequences of a waiver. Because the issue in *Rodriguez* was not whether a waiver of counsel was voluntary, the decision there cannot conflict with the decision below.

Likewise, the trial court in *Beaton v. State*, 709 So.2d 172 (Fla. 4th DCA 1998), also refused to permit self-representation, apparently without any waiver-of-counsel inquiry at all, and apparently on the ground that the trial court was familiar with the defendant and believed that he was incompetent to represent himself at trial. Such a case cannot conflict with one where the issue was the voluntariness of a waiver of counsel, because they simply involve different issues.²

²Moreover, it should be noted that *Beaton* was decided prior to the 1998 amendment to the waiver-of-counsel rule substantially altered the nature of the required inquiry. See *Amendment to Fla. Rule of Criminal Procedure 3.111(d)(2)-(3)*, 719 So.2d 873 (Fla. 1998). Prior to this amendment, rule 3.111(d)(3) stated "No waiver shall be accepted if it appears that the defendant is unable to make an intelligent and understanding choice because of a mental condition, age, education, experience, the nature or complexity of the case, or other factors." This formulation tended to frustrate a competent defendant's right to self-

In *Davis v. State*, 10 So.3d 176 (Fla. 5th DCA 2009), again the trial court gave no advice at all regarding the dangers and disadvantages of self-representation. Again the State agrees that such a waiver-of-counsel inquiry is deficient, and does not conflict with the case below because the defendant here was given detailed information about the value of counsel. *Davis* does not conflict with this case.

The same is true in *McGee v. State*, 983 So.2d 1212 (Fla. 5th DCA 2008). No inquiry at all was made before the court permitted the defendant to proceed without counsel; no advice regarding dangers and disadvantages of proceeding without counsel was offered. Again, *McGee* does not conflict with the case below because the defendant here was given detailed information about the value of counsel.

Finally, the trial court in *Watkins v. State*, 959 So.2d 386 (Fla. 2d DCA 2007), conducted no waiver-of-counsel inquiry at all; it merely confirmed that the defendant wanted to represent himself and allowed him to enter a plea with no advice regarding the dangers and disadvantages of self-representation. For the same reasons indicated with the other cases above, this decision does not conflict with the case here, because the waiver-of-counsel advice and inquiry was wholly dissimilar to the advice and inquiry in the instant case.

representation, and was rejected by this Court in the 1998 amendment. As such, any suggestion that these factors continue to be a required part of a waiver-of-counsel inquiry should be rejected.

Petitioner's argument, at best, claims a "conflict of reasons" rather than "conflict of decisions." See *Jenkins*. Even if the courts in the alleged conflict cases were suggesting that certain questions are invariably required before a waiver of counsel is valid (which the State does not concede), each one of the waiver-of-counsel inquiries in those cases was clearly deficient, and bears no resemblance to the waiver-of-counsel advice and inquiry in this case.³ The cases are readily distinguishable on the relevant facts alone. Moreover, none of the alleged conflict cases included a hearing on a motion to withdraw plea, where the trial court was able to make findings regarding the defendant's actual understanding of the consequences of the waiver of counsel. Finally, none of the cases involved a petition for writ of certiorari and its attendant higher standard for grant of relief.

In short, Petitioner has failed to demonstrate express and direct conflict between the decision below and the other

³Petitioner claims that the DCA ruled that the "individual inquiry" conducted by the trial court was sufficient, and that such ruling was in "direct conflict with the above cited opinions" (PJB at 8-9). This claim misstates the decision below. By focusing on "individual inquiry," Petitioner plainly ignores the advice given by video presentation and written plea form, both of which were critical to the DCA's ruling that his waiver of counsel was intelligently made. In contrast, none of the alleged conflict cases involved the issue of whether advice by video presentation or written form as opposed to "individual inquiry" was sufficient, and Petitioner's suggestion to the contrary is false. If anything, the fact that the instant case focused on the *manner* in which the advice was given, rather than the *content*, further demonstrates the lack of direct conflict between this case and the others.

decisions, and accordingly has failed to demonstrate that this Court has jurisdiction to review the decision below.

CONCLUSION

Based on the foregoing reason, the State respectfully requests this Honorable Court decline to exercise jurisdiction.

SIGNATURE OF ATTORNEY AND CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to David M. Robbins, Esq., and Susan Z. Cohen, Esq., 233 E. Bay Street, Suite 1125, Jacksonville, Florida 32202, by MAIL on December 10, 2010.

Respectfully submitted and served,

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the font requirements of Fla. R. App. P. 9.210.

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A P P E N D I X

Edenfield v. State, 45 So.3d 26 (Fla. 1st DCA 2010)A