

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

Case No. SC10-

v.

LESTER HACKLEY,

Respondent.

JURISDICTIONAL BRIEF OF PETITIONER

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PRELIMINARY STATEMENT

Petitioner, the State of Florida, the Appellant in the District Court of Appeal (DCA) and the prosecuting authority in the trial court, will be referenced in this brief as Petitioner, the prosecution, or the State. Respondent, Lester Hackley, the Appellee in the DCA and the defendant in the trial court, will be referenced in this brief as Respondent or by proper name.

A bold typeface will be used to add emphasis. Italics appeared in original quotations, unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

The pertinent history and facts are set out in the decision of the lower tribunal, State v. Hackley, 35 Fla. L. Weekly D2436a (Fla. 1st DCA Oct. 29, 2010).

SUMMARY OF ARGUMENT

Petitioner asserts that this Court enjoys jurisdiction pursuant to Fla. R. App. P. 9.030(a)(2)(A)(iv), as the decision below expressly and directly conflicts with the decision of the Fifth District Court of Appeal in Shaw v. State, 26 So. 3d 51 (Fla. 5th DCA 2009), on the following question of law: Does Burglary of a Conveyance with an Assault qualify for sentencing as a Prison Releasee Reoffender?

ARGUMENT

ISSUE

WHETHER THE FIRST DISTRICT'S OPINION IN STATE V. HACKLEY IS IN EXPRESS AND DIRECT CONFLICT WITH THE FIFTH DISTRICT COURT'S DECISION IN SHAW V. STATE, 26 So.3d 51 (FLA. 5TH DCA 2009)? (Restated)

Petitioner contends that this Court has jurisdiction pursuant to Fla. R. App. P. 9.030(a)(2)(A)(iv), which parallels Article V, § 3(b)(3), Fla. Const. The constitution 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)(rejected "inherent" or "implied" conflict; dismissed petition). Neither the record, nor a concurring opinion, nor a dissenting opinion can be used to establish jurisdiction. Reaves, supra; Jenkins v. State, 385 So.2d 1356, 1359 (Fla. 1980)("regardless of whether they are accompanied by a dissenting or concurring opinion"). Thus, conflict cannot be

based upon "unelaborated per curiam denials of relief," Stallworth v. Moore, 827 So.2d 974 (Fla. 2002).

In addition, it is the "conflict of decisions, not conflict of opinions or reasons that supplies jurisdiction for review by certiorari." Jenkins, 385 So. 2d at 1359.

In Ansin v. Thurston, 101 So. 2d 808, 810 (Fla. 1958), this Court explained: It was never intended that the district courts of appeal should be intermediate courts. The revision and modernization of the Florida judicial system at the appellate level was prompted by the great volume of cases reaching the Supreme Court and the consequent delay in the administration of justice. The new article embodies throughout its terms the idea of a Supreme Court which functions as a supervisory body in the judicial system for the State, exercising appellate power in certain specified areas essential to the settlement of issues of public importance and the preservation of uniformity of principle and practice, with review by the district courts in most instances being final and absolute.

Accordingly, the First District Court's decision reached a result opposite to Shaw, thereby bestowing conflict jurisdiction upon this Honorable Court. The State elaborates.

The decision below is in "express and direct" conflict with Shaw v. State, 26 So.3d 51 (Fla. 5th DCA 2009).

In the case at bar, the facts alleged in the opinion show that Respondent was convicted of Burglary of a Conveyance with an Assault, and was sentenced as a Prison Releasee Reoffender (PRR). See State v. Hackley, 35 Fla. L. Weekly D2436a (Fla. 1st DCA Oct. 29, 2010). Subsequently, Respondent filed a Florida Rule of Criminal Procedure 3.800(a) Motion to Correct Illegal Sentence, attacking his PRR sentencing. Id. The trial court held that, pursuant to this Court's decision in State v. Hearns, 961 So. 2d 211, 213 (Fla. 2007), Burglary of a Conveyance with a Battery, which is a greater offense than Burglary of a Conveyance with an Assault, does not qualify for PRR sentencing. Id. The First District Court of Appeal affirmed the trial court's ruling, holding:

A basic tenet of statutory construction compels a court to interpret a statute so as to avoid a construction that would result in unreasonable, harsh, or absurd consequences. See Thompson v. State, 695 So. 2d 691, 693 (Fla. 1997). Thus, to avoid the absurd consequence of encouraging a defendant who has already committed burglary with an assault to put the victim in physical danger by committing a battery to avoid the possibility of PRR sentencing, we affirm the trial court's order.

Id. The First District, however, noted that the Fifth District Court of Appeal arrived at a different conclusion in finding that the commission of an assault during the commission of a felony, does qualify as a PRR offense under the statute. Shaw v. State, 26 So. 3d 51, 53 (Fla. 5th DCA

2009)("[W]e recognize the irony that a defendant who commits a battery during the commission of a felony does not qualify as a PRR under the statute, but a defendant who commits an assault does."). The First District further held that to the extent Shaw conflicted with its decision in the instant case, they were certifying conflict.

Therefore, there is expressed and direct conflict conferring jurisdiction to this Court for review.

CONCLUSION

Based on the foregoing reason, the State respectfully requests this Honorable Court exercise its jurisdiction in this cause.

SIGNATURE OF ATTORNEY AND CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to Barbara kaye Hobbs, Cummings Hobbs & Wallace, 462 W.Brevard Street, Tallahassee, Florida 32301 by MAIL on this 2nd day of December, 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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APPENDIX

A. State v. Hackley, 35 Fla. L. Weekly D2436a