

IN THE SUPREME COURT OF FLORIDA

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|-----------------------|---|------------------------|
| STATE OF FLORIDA, |) | |
| |) | |
| Petitioner/Appellant, |) | |
| |) | |
| vs. |) | CASE No. SC10-2425 |
| |) | DCA Case No. 4D09-1965 |
| JOHN McMAHON, |) | |
| |) | |
| Respondent/Appellee. |) | |
| _____ |) | |

RESPONDENT’S BRIEF ON JURISDICTION

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AUTHORITIES CITED

State v. Chaves-Mendez, 809 So. 2d 910 (Fla. 5th DCA 2002).....3,4,5

Mancini v. State, 312 So. 2d 732 (Fla. 1975)4

FLORIDA CONSTITUTION

Article V, Section 3(b)(3)3,4

INTRODUCTION

Pursuant to Fla. R. App. P. 9.120(d) and 9.210(a) and (c), Respondent-Appellee, JOHN McMAHON, files this Brief on Jurisdiction. Respondent will be referred to throughout this brief as defendant or respondent and the State of Florida will be referred to as the petitioner or the state. All emphasis has been added unless otherwise indicated. The following symbols will be used:

“R” - Pleadings filed as of record

“T” - Transcript of Testimony

“PB”- Jurisdictional Brief of Petitioner

STATEMENT OF THE CASE AND FACTS

Defendant accepts the facts in the Initial Brief as being substantially correct and reserves the right to argue additional facts in the argument portion of this brief. Respondent notes that the record clearly reflects that when asked by the court, the state agreed that the 18th month bottom of the guidelines sentence imposed was a legal sentence. (T 8-9)

SUMMARY OF THE ARGUMENT

This Honorable Court has authority pursuant to Article V, Section 3(b)(3) of the Florida Constitution to review a decision of a district court of appeal that expressly and directly conflicts with a decision of another district court of appeal *on the same issue of law*. Contrary to the argument of the state, the decision in the instant case does not conflict on the same issue of law addressed in State v. Chaves-Mendez, 809 So. 2d 910 (Fla. 5th DCA 2002) and is factually distinguishable.

ARGUMENT

THE DECISION OF THE DISTRICT COURT OF APPEAL IN STATE v. McMAHON DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH THE DECISION OF THE FIFTH DISTRICT COURT IN STATE V. CHAVEZ-MENDEZ ON THE SAME POINT OF LAW.

This Honorable Court has authority pursuant to Article V, Section 3(b)(3) of the Florida Constitution to review a decision of a district court of appeal that expressly and directly conflicts with a decision of another District Court on the same question of law. As noted by the state in its jurisdictional brief, conflict jurisdiction is vested in this Honorable Court only when the district court announces a rule of law which conflicts with another court's pronouncement or when the court applies a rule of law to produce a different result in a case which involves substantially the same facts of another case. Mancini v. State, 312 So. 2d 732, 733 (Fla. 1975). (PB - 4)

In State v. Chavez-Mendez 809 So. 2d 910 (Fla. 5th DCA 2002), the Fifth District held that "The trial court's initiation of plea negotiations with the defendant was *per se* reversible error." In contrast, the issue and pronouncement of the Fourth District in the case at bar was the lack of jurisdiction where the sentence imposed sought to be appealed by the state is a legal sentence. Clearly, the pronouncements by the courts in each of these case involved different issues. Moreover, the facts are not substantially similar. The sentence imposed in the

instant case was a legal guidelines sentence which was acknowledged by the state on the record. Conversely, in the Chaves-Mendez case, the downward departure sentence of probation imposed was an illegal sentence not supported by valid reasons for departure as reflected by the concurring opinion. Moreover, even in the majority opinion it is clear that the sentence of probation was an illegal downward departure sentence as evidenced by the footnote explaining that the only lawful sentence for capital sexual battery (for which, inter alia, defendant was charged and pled to) is life imprisonment with a minimum mandatory of twenty-five years. 809 So. 2d at 911, FN 3. Thus, there is no direct and express conflict between the opinion in the present case and the Chaves-Mendez case.

CONCLUSION

Based upon the foregoing arguments and authorities cited herein above, Respondent-Appellee, JOHN McMAHON, respectfully requests that this Honorable Court decline to accept jurisdiction in this cause.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing BRIEF ON JURISDICTION has been furnished to Jeanine M. Germanowicz, Asst. Attorney General, 1515 North Flagler Drive., Ninth Floor, West Palm Beach, FL 33401-3432, by courier this 28th day of December, 2010.

ALAN T. LIPSON

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing RESPONDENT'S BRIEF ON JURISDICTION complies with the font requirements of Fla. R. App. 9.210(a)(2).

ALAN T. LIPSON