IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. SC10-2483

LAVARESS HOPKINS,

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 Nineteenth Judicial Circuit, in and for St. Lucie 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
(limited to the issue of jurisdiction)

"The jurisdictional brief should be a short, concise statement of the grounds for invoking jurisdiction and the necessary facts. It is not appropriate to argue the merits of the substantive issues involved in the case or discuss any matters not relevant to the threshold jurisdictional issue". See, Committee Notes for 1970 Amendment of Rule 9.120.

Respondent charged Petitioner below with battery by a detainee in violation of §§784.03 and 784.082, Florida Statutes (2009). Petitioner filed a motion to dismiss arguing that under T.C. v. State, 852 So.2d 276 (Fla. 1st DCA 2003) , "[a]n alleged battery occurring at the hands of a juvenile detained in the juvenile detention facility cannot under the law be charged as battery by detainee."

Because Respondent, below, did not provide any cases to the court contradicting Petitioner's position, the trial court, all the while disagreeing with the proposition, dismissed Petitioner's cause.

On appeal, the Fourth District Court of Appeal noted that in the past, both it and the Fifth District Court of Appeal, have affirmed juvenile adjudications on the charge of battery by a detainee. Because the trial court was not made aware of the decisions in J.A. v. State, 743 So.2d 601 (Fla. 4th DCA 1999) and J.A.D. v. State, 855 So.2d 1199 (Fla. 5th DCA 2003) before dismissing Petitioner's charges, the trial court's order was reversed. Petitioner now seeks review of the decision of the Fourth District Court of Appeal based on conflict jurisdiction.

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 in T.C, v. State, 852 So.2d 276 (Fla. 1st DCA 2003). Therefore, this Court should not review the case at bar and should dismiss the Petitioner's case.

Argument

THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL IN THE INSTANT CASE DOES NOT CONFLICT WITH THE DECISION OF THE FIRST DISTRICT IN T.C. v. STATE, 852 So.2d 276 (FLA. 1st DCA 2003)

Petitioner alleges that the decision of the Fourth District Court of Appeal in State v. Hopkins, 47 So.3d 974 (Fla. 4th DCA 2010) expressly and directly conflicts with the decision of the First District in T.C. v. State, 852 So.2d 276 (Fla. 1st DCA 2003).

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 this Court or 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. This Court's jurisdiction to review the Fourth District's decision in this case may only 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. 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. 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. 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)).

The Fourth District’s opinion in the case at bar does not establish conflict

with the First District's opinion in T.C. for purposes of this Court's jurisdiction. Although, in T.C., the First District directly addressed their opinion on the legality of a juvenile's adjudication on the charge of battery in a detention facility, the Fourth District did not here. Instead, in reversing the trial court's order dismissing Petitioner's charges, the Fourth District cited the fact that the trial court was unaware of caselaw which supported a contrary view when erroneously dismissing the charges against Petitioner. Indeed, the Fourth District, in their opinion, did not "[announce]…a rule of law which conflicts with a law previously announced by…another district court of appeal" but merely pointed out that, contrary to what was suggested to the trial court, T.C. was not controlling authority. Mancini v. State, 312 So. 2d at 733.

Notably, Petitioner does not allege that the Fourth District's opinion here announces a rule of law which conflicts with that of the First District. Instead, he attempts to gain review by pointing out that "[i]n both J.A. and J.A.D.[1], the district courts affirmed adjudications of juveniles found guilty of battery on a fellow detainee…". Petitioner's Jurisdictional Brief, 4. However, neither J.A. nor J.A.D. can form the basis of conflict where they are not before this Court. Further, their mere reference in the Fourth's opinion can hardly be considered a full address of

[1] The cases that the Fourth District Court of Appeal noted were not brought to the

its opinion on the legality of charging a juvenile with battery in a detention facility. Ford Motor Co. v. Kikis, 401 So. 2d 1341, 1342 (Fla. 1981).

At bar, it is clear that the Fourth District's opinion in the instant case did not announce and explain its position on the legality of charging a juvenile with battery in a detention facility in a fashion which conflicts with T.C. Instead, the Fourth District reversed the trial court's ruling because it was based on an inaccurate rendition of the relevant caselaw. Accordingly, this Court should decline to review the decision of the Fourth District in this case.

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trial court's attention.

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 Tom Wm. Odom, 421 Third Street, 6th Floor, West Palm Beach, FL 33401 on January 10, 2011.

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KATHERINE Y. MCINTIRE
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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KATHERINE Y. MCINTIRE
Assistant Attorney General