

**IN THE
SUPREME COURT OF FLORIDA**

LAVARESS HOPKINS)	
)	
Petitioner,)	
)	CASE NO. SC
vs.)	DCA CASE NO. 4D09-1152
)	
STATE OF FLORIDA,)	
)	
Respondent.)	
)	
_____)	

PETITIONER’S BRIEF ON JURISDICTION

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STATEMENT OF THE CASE AND FACTS

Respondent charged petitioner with battery by a detainee in a juvenile detention facility in violation of sections 784.03 and 784.082, Florida Statutes (2007). Section 784.082 is an enhancement statute that reclassifies simple battery from a first degree misdemeanor to a third degree felony “[w]henver a person who is being detained in a prison, jail, or other detention facility is charged with committing . . . a battery . . . upon any other detainee in the detention facility, . . .” § 784.082(3), Fla. Stat. (2007). Petitioner filed a motion to dismiss and the trial court granted the motion under the authority of *T.C. v. State*, 852 So.2d 276 (Fla. 1st DCA 2003). Respondent took appeal before the Fourth District Court of Appeals.

The Fourth District Court reversed the granting of the motion to dismiss citing *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), and remanded the case for reinstatement of the charge. *State v. Hopkins*, 35 Fla. L. Weekly D2622 (Fla. 4th DCA Dec. 1, 2010). On December 16, 2010, petitioner filed notice of intent to invoke the discretionary jurisdiction of this Court based on a conflict between this decision and that of other district courts of appeal. This jurisdictional brief follows.

SUMMARY OF THE ARGUMENT

The opinion of the Fourth District Court of Appeal in *State v. Hopkins*, 35 Fla. L. Weekly D2622 (Fla. 4th DCA Dec. 1, 2010), is in express and direct conflict with the opinion of *T.C. v. State*, 852 So.2d 276 (Fla. 1st DCA 2003), on the same question of law, whether a child in a juvenile detention facility may be charged with battery by a detainee pursuant to Florida Statutes section 784.082.

ARGUMENT

THIS COURT HAS JURISDICTION TO REVIEW *STATE V. HOPKINS*, 35 FLA. L. WEEKLY D2622 (FLA. 4TH DCA DEC. 1, 2010), WHERE THE DECISION RENDERED IS IN EXPRESS AND DIRECT CONFLICT WITH *T.C. v. STATE*, 852 So.2d 276 (Fla. 4th DCA 2003).

Article V, § 3(b)(3) of the Florida Constitution vests this Court with jurisdiction to “review any decision of a district court of appeal . . . that expressly and directly conflicts with a decision of another district court of appeal . . . on the same question of law.” *Accord* Fla. R. App. P. 9.030(a)(2)(A)(iv). In *Nielson v. City of Sarasota*, 117 So.2d 731 (Fla. 1960), this Court discussed “conflict jurisdiction” stating that “[i]t is the announcement of a conflicting rule of law that conveys jurisdiction to us to review the decision of the Court of Appeal.” *Id.*, at 734; *accord* *Kaigler v. State*, 944 So.2d 340 (Fla. 2006); *J.I.S. v. State*, 930 So.2d 587 (Fla. 2006). “The constitutional standard is whether the decisions 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). The Fourth District Court of Appeal’s decision is in express and direct conflict with the decision of another district court on the same question of law.

In reversing the granting of the motion to dismiss, the Fourth District Court cited its own precedent of *J.A. v. State*, 743 So.2d 601 (Fla. 4th DCA 1999), as well

as the Fifth District Court's precedent in *J.A.D. v. State*, 855 So.2d 1199 (Fla. 5th DCA 2003). *State v. Hopkins*, 35 Fla. L. Weekly D2622 (Fla. 4th DCA Dec. 1, 2010). In both *J.A.* and *J.A.D.*, the district courts affirmed adjudications of juveniles found guilty of battery on a fellow detainee in violation of Florida Statute section 784.082. But the lower trial court dismissed the charge while relying on the First District Court's opinion in *T.C. v. State*, 852 So.2d 276 (Fla. 1st DCA 2003). In *T.C.*, the First District Court reversed the third degree felony delinquency adjudication for battery by a detainee because "[n]othing in section 784.082 indicates that the statute applies to juveniles held in juvenile facilities." *Id.* The decision of the Fourth District Court in *Hopkins* is thus in express and direct conflict with the decision of the First District Court in *T.C.* on the question whether a child in a detention facility who commits simple battery on a fellow detainee is guilty of a misdemeanor or a felony.

CONCLUSION

Petitioner has demonstrated the existence of express and direct conflict between the opinion on review and the opinion of another District Court of Appeal and, as a result, this Court should grant the petition for discretionary review.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to KATHERINE Y. MCINTIRE, Assistant Attorney General, Office of the Attorney General, Ninth Floor, 1515 N. Flagler Drive, West Palm Beach, Florida 33401-3432, by courier this _____ day of December, 2010.

Of Counsel

CERTIFICATE OF FONT SIZE

I HEREBY CERTIFY the instant brief has been prepared with 14 point Times New Roman type, in compliance with a R. App. P. 9.210(a)(2).

Assistant Public Defender

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Decision Filed December 1, 2010.1-2

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