IN THE SUPREME COURT OF FLORIDA

DAVID CARBAJAL

Petitioner,

v. Case No. SC10-466

STATE OF FLORIDA,

Respondent.

_____/

DISCRETIONARY REVIEW OF DECISION OF THE
DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

RESPONDENT'S BRIEF ON THE MERITS

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STATEMENT OF THE CASE AND FACTS

Petitioner was prosecuted by the Office of the Statewide Prosecutor in connection with a narcotics trafficking enterprise. Specifically, the Statewide Prosecutor charged Petitioner with Conspiracy, two counts of Sale or Delivery of Cocaine, three counts of trafficking in Cocaine, Sale or Delivery of Amphetamine, two counts of Trafficking in Methamphetamine, and Sale or Delivery of Cocaine within 1000 feet of a school.

The Information charged that the trafficking occurred:

> in two or more judicial circuits or in connection with an organized criminal conspiracy affecting two or more judicial circuits, one of which is the Twentieth Judicial Circuit in and for Lee County

(R 16).

The prosecution took place in Lee County. Petitioner pled to the charges and did not challenge his conviction or sentence on direct appeal. Instead, five years later Petitioner filed a motion for post-conviction relief challenging the trial court's jurisdiction. Specifically, Petitioner argued that the trial court lacked jurisdiction to accept his plea because the Statewide Prosecutor lacked jurisdiction to prosecute him. (R 4). He argued that the charged crimes were limited to Lee County. (R 5).

In response to Petitioner's claim, the State filed its response, asserting that it had sufficient evidence to establish Petitioner's multijurisdictional activity, but Petitioner's plea curtailed presentation of such evidence. (R 10-14). The State specifically pointed to Petitioner's statements which confirmed he received the narcotics from outside Lee County. (R 13).

The trial court summarily denied Petitioner's claim on the merits. (R 45-48). The court found that the Office of Statewide prosecution had jurisdiction because the information adequately alleged that Petitioner committed the offenses "as part of related transactions occurring in two or more judicial circuits or in connection with an organized criminal conspiracy affecting two or more judicial circuits, one of which is the Twentieth Judicial Circuit in and for Lee County." (R 47). This conclusion was based on evidence that Petitioner's cousin would travel to North Carolina and Mexico to pick up the cocaine. Methamphetamines were purchased in Atlanta, North Carolina and Mexico.

The Second District affirmed the trial court's summary denial of the post-conviction claim, based solely on the conclusion that the post-conviction motion was untimely. The court declined to consider the merits of Petitioner's jurisdiction claim.

SUMMARY OF THE ARGUMENT

The Second District Court of Appeal properly concluded that post-conviction challenges to a trial court's jurisdiction are subject to the two year time limitation set forth in Rule of Criminal Procedure 3.850(b).

ARGUMENT

A POST-CONVICTION CHALLENGE TO A TRIAL COURT'S JURISDICTION MUST BE FILED WITHIN THE TWO YEAR TIME LIMITATION SET FORTH UNDER RULE OF CRIMINAL PROCEDURE 3.850.

The narrow issue before this Court is whether the two year time period for filing a post-conviction motion under Florida Rule of Criminal Procedure 3.850(b) applies when the post-conviction motion challenges the trial court's jurisdiction. The Second District Court of Appeal correctly determined that it does. Carbajal v. State, 28 So. 3d 187 (Fla. 2d DCA 2010).

Time Limitation Under Rule 3.850(b)

Florida Rule of Criminal Procedure 3.850 sets a two year time limitation for a defendant to raise a post-conviction challenge to his conviction and sentence. Petitioner argues that this two year time limitation must yield to those decisions from Florida's district courts of appeal which have ruled that a jurisdictional challenge can be raised at any time. see Brown v. State, 917 So. 2d 272 (Fla. 5th DCA 2005)(relying on Rule 3.850(a)); Gunn v. State, 947 So. 2d 551 (Fla. 4th DCA 2006)(relying on Brown); Harris v. State, 854 So. 2d 703 (Fla. 3d DCA 2003). Carbajal does not base this conclusion on a reading of the Rule or its exceptions. Rather, his claim is

rooted in common law.

The Second District Court of Appeal properly rejected Petitioner's attempt to apply case law which ignored the time limitation set forth in Rule 3.850(b). The Second District observed that the rule set a time limitation which, by its plain language, applies to all post-conviction claims, except those expressly set forth under Rule 3.850(b), namely:

> (b) Time Limitations. A motion to vacate a sentence that exceeds the limits provided by law may be filed at any time. No other motion shall be filed or considered pursuant to this rule if filed more than 2 years after the judgment and sentence become final in a noncapital case or more than 1 year after the judgment and sentence become final in a capital case in which a death sentence has been imposed unless it alleges that
>
> (1) the facts on which the claim is predicated were unknown to the movant or the movant's attorney and could not have been ascertained by the exercise of due diligence, or
>
> (2) the fundamental constitutional right asserted was not established within the period provided for herein and has been held to apply retroactively, or
>
> (3) the defendant retained counsel to timely file a 3.850 motion and counsel, through neglect, failed to file the motion.

Fla. R.Crim. P. 3.850(b)(1)-(3).

Relying on the Rule's express language, the Second District determined that decisions which permitted a defendant to pursue an untimely jurisdictional challenge to a conviction and sentence failed to apply the clear directive set forth in Rule 3.850(b).

The history behind this Court's adoption of Rule 3.850 supports the Second District's ruling. The Rule emerged following the United States Supreme Court's decision in Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963), which created an increased demand for post-conviction relief. Rule 3.850's progenitor, Rule 1, was adopted to create a mechanism to raise post-conviction challenges other than by way of a writ of habeas corpus. Baker v. State, 878 So. 2d 1236 (Fla. 2004); Roy v. Wainwright, 151 So. 2d 825, 826-28 (Fla. 1963)("When Gideon was announced, the only practicable procedures available in Florida for a post conviction assault upon a judgment were by habeas corpus, or writ of error coram nobis." [In response, the court adopted a rule] "which would facilitate and expedite the handling of post-conviction claims" [by creating] "a simplified, expeditious and efficient post-conviction procedure."). Rule 3.850, as originally adopted, placed no limitations on post-

conviction attacks. Carbajal, 28 So. 2d at 189 (citing In re Criminal Procedure Rule No. 1, 151 So. 2d 634, 634 (Fla. 1963)).

Twenty years later, besieged with successive petitions or petitions relitigating issues disposed of on direct appeal, this Court amended Rule 1 to place a limitation on the availability of post-conviction relief. McCrae v. State, 437 So. 2d 1388 (Fla. 1983)(concurring in result, Justice Alderman called for a time limitation for filing 3.850 motions). In so doing, this Court sought to impose a sense of finality of judgments "and to restore the public's confidence in our criminal system of justice." Baker, 878 So. 2d at 1243 citing McCrae, 437 So. 2d at 1391. This finality was accomplished by imposing a two-year limitations period on post-conviction motions. Fla. Bar re Amendment to Rules of Criminal Procedure (Rule 3.850), 460 So. 2d 907 (Fla. 1984).

Within this limitation, this Court carved out a narrow exception for two specific instances. Rule 3.850(1)& (2). Thereafter, a third exception, Rule 3.850(b)(3) was added in 1999. Steele v. Kehoe, 747 So. 2d 931 (Fla. 1999). In the over twenty-five years since Rule 3.850 was enacted, this Court has not seen fit to include post-conviction jurisdictional challenges.

A review of this history convinced the Second District

"that the two-year limit and its exceptions are deliberate choices designed to balance competing interests and that we should apply the rule as written." Carbajal, 28 So. 3d, 189-190(finding that time limitations protect the justice system against piecemeal litigation and stale claims while preserving unlimited access under specified conditions); Haag v. State, 591 So. 2d 614, 616 (Fla. 1992) ("[T]he right to habeas relief, like any other constitutional right, is subject to certain reasonable limitations consistent with the full and fair exercise of the right....[T]he two-year time limitation imposed by Rule 3.850 serves to promote the fairness and finality required of our criminal justice system.").

The Florida Constitution "grants this Court the exclusive authority to set deadlines for postconviction motions." Allen v. Butterworth, 756 So. 2d 52, 62 (Fla. 2000)("For all of [the reasons set forth therein], we conclude that the establishment of time limitations for the writ of habeas corpus is a matter of practice and procedure and, therefore, the judiciary is the only branch of government authorized by the Florida Constitution to set such deadlines."); Jones v. Florida Parole Com'n, --- So. 3d ----, 2010 WL 4007652 (Fla. Oct. 14, 2010). Rule 3.850(b) sets this deadline at two years, unless otherwise expressly provided.

Given this Court's deliberate imposition of a narrow exception to Rule 3.850's rule of finality, no additional exception should be found to exist.

From its inception, Rule 3.850 included post-conviction jurisdictional challenges among those authorized by the Rule. While this Court specifically included a jurisdictional challenge among those claims properly brought under Rule 3.850, "subsection (b), which specifies the time limits within which the motion must be filed, makes no exception to the two-year limit for a motion asserting the circuit court's lack of jurisdiction." Carbajal, 28 So. 3d at 188. It must be concluded that this Court, by initially excluding jurisdictional challenge from the time limit exceptions, and by declining, in the intervening years, to amend the exception to include jurisdiction, has expressed a clear intention to subject jurisdictional challenges to a two year limitations period, in the interest of finality.

The Second District reviewed Petitioner's claim within this procedural context. In support of his appellate challenge, Carbajal relied on numerous decisions which held that a jurisdictional challenge could be raised at any time. However, these decisions upon which Petitioner relied before the Second District failed to consider that Rule 3.850(a)'s entitlement to

challenge a court's jurisdiction is modified by Rule 3.850's time limitation.

Several of the authorities upon which Carbajal relies are distinguishable based on their procedural posture. Decisions such as Page v. State, 376 So. 2d 901 (Fla. 2d DCA 1979), upon which State v. Billie, 497 So. 2d 889 (Fla. 2d DCA 1986), relies, involve jurisdictional claims raised on direct appeal from a judgment and sentence. These cases do not raise the question of Rule 3.850's time limitation. see also Winter v. State, 781 So. 2d 1111 (Fla. 1st DCA 2001); Booker v. State, 497 So. 2d 957 (Fla. 1st DCA 1986); Waters v. State, 354 So. 2d 1277 (Fla. 2d DCA 1978)("Since the circuit court does not have jurisdiction when only a misdemeanor is charged, the trial court did not have jurisdiction in this case."). Luger v. State, 983 So. 2d 49 (Fla. 4th DCA 2008), also presents a jurisdictional challenge on direct appeal.

Other decisions, some of which share Carbajal's procedural posture, include many in which the trial court lacked subject matter jurisdiction to rule on misdemeanors brought in circuit court or in which the appellate court's exercise of its jurisdiction had divested the trial court of its jurisdiction. In Luger, the Fourth District cites to Ex parte Reed, 135 So. 302

(Fla. 1931) and Pope v. State, 268 So. 2d 173 (Fla. 1972), to support the conclusion that failure to establish subject matter jurisdiction voids the court's judgment. In both of those cases, the Information failed to include allegations which invoked the circuit court's felony jurisdiction. Rather, both cases alleged crimes which were misdemeanors within the jurisdiction of the county court. Winter v. State, to which Luger also cites, relies on Booker v. State, which also dealt with misdemeanor charges incorrectly tried by the felony circuit court.

This line of reasoning can also be seen in Brown v. State, which relies on Booker, as well as Harrell v. State, 721 So. 2d 1185 (Fla. 5th DCA 1998). In Harrell, the trial court accepted the defendant's plea at a time that the appellate court was entertaining a writ of prohibition filed to halt proceedings following a mistrial. The trial court lacked jurisdiction in Harrell, because the appellate proceeding divested it of jurisdiction. 721 So. 2d at 1186-1187.

None of these decisions, even those post-conviction appeals which cite generally to Rule 3.850, provided a rationale for concluding that the plain language of Rule 3.850 must yield to the common law notion that jurisdiction can be raised at any time. See e.g. Davis v. State, 998 So. 2d 1196 (Fla. 1st DCA

2009); Willie v. State, 600 So. 2d 479 (Fla. 1st DCA 1992); Brown v. State, 917 So. 2d at 273. Accordingly, the Second District declined to apply those decisions to Carbajal's post-conviction claim.

Considered within its procedural context, Carbajal's allegations do not fall within any of the exceptions set forth in Rule 3.850(b). The facts on which the claim is based were either known to him or should have been known to him at the time he entered his plea, or would have been known with the exercise of reasonable diligence during the two-year period since the mandate issued. Carbajal does not claim entitlement to the retroactive application of a newly established Constitutional right. Nor can he argue neglect by counsel, as Carbajal has preceded pro-se until this point. Finally, the post-conviction motion at issue was successive, without any explanation of why this claim was not raised in earlier motions. Moore v. State, 820 So. 2d 199, 205 (Fla. 2002) (holding that a successive rule 3.850 motion can be denied if there is no reason why the issue could not have been raised in a previous motion). Accordingly, the Second District properly applied the two year limitations period established by this Court.

The Statewide Prosecutor's Jurisdiction Over Carbajal

The specific question of the statewide prosecutor's jurisdiction in this case is not expressly before this Court. Nor does the certified conflict compel review of the trial court's merits review of Carbajal's post-conviction claim. The Second District Court of Appeal explicitly declined to consider the merits of the jurisdictional challenge, finding, instead, that the post-conviction motion was untimely. Nevertheless, Petition's brief argues at length against the Statewide Prosecutor's authority to prosecute Carbajal. Accordingly, the State briefly responds.

Petitioner portrays the jurisdictional challenge at issue as one directed at the trial court's subject matter jurisdiction. The State maintains that a challenge to the statewide prosecutor's authority to prosecute is a challenge based on personal jurisdiction over the defendant.

"'Jurisdiction is the power conferred on a court by the sovereign to take cognizance of the subject matter of a litigation and the parties brought before it and to hear and determine the issues and render judgment.'" Willie, 600 So. 2d at 481-482. (internal citations omitted). Florida vests the circuit courts with "exclusive original jurisdiction ... [o]f all felonies...."

§ 26.012(2)(d), Fla. Stat. (2009); Art. V, § 5, Fla. Const.

In Luger, the Fourth District concluded that a challenge to the trial court's jurisdiction which based on a challenge to the statewide prosecutor's jurisdiction raises a challenge to the court's subject matter jurisdiction. The State in Luger argued, and maintains herein, that subject matter jurisdiction "concerns the power of a court to deal with a class of cases to which a particular case belongs," and the court's ability to preside over a specific defendant's prosecution is a matter of personal jurisdiction. Luger, 983 So. 2d at 50.

While it is true that other district courts have found the question of the statewide prosecutor's authority to be one of subject matter jurisdiction, those decisions rely on precedent which is distinguishable. Decisions such as Luger reason by analogy from cases involving jurisdictional disputes between the county and circuit court or the trial and appellate courts. As detailed in Luger, both the Fourth and the First District's decisions rely on Reed and Page, cases which hinge on the jurisdictional boundaries between the county and circuit courts.

Section 16.56, Florida Statutes, creating the office of the Statewide Prosecutor, endows that office with the power to investigate and prosecute certain specified offenses. Pursuant

to Florida's Constitution, the Statewide prosecutor enjoys concurrent jurisdiction with the States Attorneys to prosecute criminal violations. §16.56, Fla. Stat. (2009); Art. IV, § 4(b), Fla. Const.

The Statewide Prosecutor's jurisdiction, i.e. its authority, to prosecute arises when one or more judicial circuits are affected by a defendant's criminal actions. If a court determines that a criminal defendant's actions are located solely in one judicial circuit, then the Statewide Prosecutor lacked the authority to prosecute that individual. Instead, that individual must be prosecuted in the same circuit court by the State Attorney. §16.56(1)(a), Fla. Stat. (establishing concurrent jurisdiction of the statewide prosecutor and the state attorneys to prosecute criminal violations). For that reason, the State sees this issue as one of personal, not subject matter, jurisdiction.

The present case is not one which the Information fails to charge a felony, divesting the circuit court of its jurisdiction over the subject matter. Here, at all times, the character of the crimes remained felonies. Thus, the trial court's authority to consider those crimes did not change. The trial court had the authority to properly consider charges arising from criminal

acts within Lee County. The charged crimes were felonies under Florida law. The only question was which entity- the Statewide Prosecutor of the State Attorney- had the authority to prosecute those crimes. This question requires consideration of whether the court had jurisdiction over the Petitioner, not the criminal acts with which he was charged.

It is undisputed that section 16.56, Florida Statutes, vests the Statewide Prosecutor's authority on an offense having occurred "in two or more judicial circuits as part of a related transaction, or when any such offense is connected with an organized criminal conspiracy affecting two or more judicial circuits." It is also well established that "the policy behind the creation of the Office of Statewide Prosecution demands that [courts] broadly construe the prosecutorial authority of the statewide prosecutor." King v. State, 790 So. 2d 477, 479-480 (Fla. 5th DCA 2001). Thus, the Statewide prosecutor need only have alleged criminal activity in two judicial circuits to have the authority to subject Carbajal to the personal jurisdiction of the Lee County court.

Florida precedent supports the conclusion that criminal conspiracies which rely on transportation of their wares between circuits are subject to prosecution by the Statewide Prosecutor.

In King, the defendant operated a "motorcycle chop shop in Orange County (Ninth Circuit) which depended in part on stolen motorcycles from Volusia County (Seventh Circuit)." King, 790 So. 2d at 479. On these facts, the Fifth District determined that the Statewide Prosecution had the authority prosecute a criminal conspiracy "which had tentacles reaching across judicial circuit lines." King, 790 So. 2d at 479.

Carbajal's criminal sales of narcotics, while occurring in the Twentieth Judicial Circuit, relied on narcotics obtained outside of Lee County. In addition to Petitioner's admission that he previously obtained narcotics from Dade County, Petitioner also detailed his recent reliance on narcotics from Mexico, Texas, Atlanta and North Carolina.

Proof of drug trafficking requires evidence, among other things, that the narcotic was knowingly brought into this state. § 893.135(b) & (f), Fla. Stat. (2009). Petitioner's plea to these charges had far reaching affects. First, the plea admitted this element of the offense. In so doing, the plea affirmed the multijurisdictional character of the crime, making Statewide Prosecution's assertion of its authority proper. Thus, error in the charging document, if any, was cured by virtue of the plea.

By entering his plea, Carbajal also waived any objection that the trial court lacked personal jurisdiction over him. Desmond v. State, 576 So. 2d 743 (Fla. 2d DCA 1991)(“Desmond submitted himself to the personal jurisdiction of the court and cannot now complain of a lack of jurisdiction over him.”); Maddock v. State, 478 So. 2d 529, 529 (Fla. 4th DCA 1985)(“We affirm the trial court's denial of appellant's motion for post-conviction relief. In our view the appellant waived any objection to the trial court's jurisdiction over his person when he entered a plea of guilty.”).

Finally, the plea bars any claim of error in the charging document by virtue of the invited error principle. By entering into a plea, Carbajal foreclosed any presentation by the State of evidence which would have showed the link between his criminal enterprise and judicial circuits outside of Lee County. Thus, it may be argued that the plea invited any error in the State’s proof and could not have been the subject of appellate relief. Czubak v. State, 570 So. 2d 925, 928 (Fla. 1990)("Under the invited-error doctrine, a party may not make or invite error at trial and then take advantage of the error on appeal.").

While it is true that the Statewide Prosecutor’s authority does not derive from criminal activity in other states or coun-

tries, the narcotics obtained outside of Florida were required to travel through Florida, touching many judicial circuits, before winding up in Lee County. It is that connection with other circuits, like the intrastate transportation in King, that invokes the authority of the Statewide Prosecutor.

By his own admission, Carbajal abandoned his Miami distributor in favor of several distributors outside the State of Florida, based on the quality of the product he could obtain. Carbajal repeatedly used the high quality of these narcotics as a selling point to his "customer," undercover Detective Leverenz. To obtain the narcotics from distributors beyond the State, Carbajal's co-conspirator was required to travel within Florida from Lee county, crossing multiple jurisdictions on his way to Atlanta, North Carolina, Texas and Mexico.

Lee County is located in the Southwestern portion of Florida. Travel outside of Florida, be it via Interstate highways or local roads, would have required Carbajal or his co-conspirator to cross multiple counties which comprise numerous judicial circuits. Given the State's evidence that Carbajal's co-conspirator brought the narcotics into Florida from outside the State, more than one judicial circuit is connected to his narcotics sales in Lee County. The Statewide Prosecutor's exercise

of his jurisdiction was proper.

An appellate court reviews a trial court's summary denial of a post-conviction motion under a de novo standard. State v. Coney, 845 So. 2d 120, 137 (Fla. 2003). "To uphold the trial court's summary denial of claims raised in a 3.850 motion, the claims must be either facially invalid or conclusively refuted by the record." Finney v. State, 831 So. 2d 651, 656 (Fla. 2002).

Unlike Brown, the trial court in this case made a determination on the merits. Brown, 917 So. 2d at 273(remanding for the trial court's review on the merits). The trial court's record attachments reflected Petitioner's acquisition of the narcotics from outside of Lee County. On review of the trial court's ruling, the Second District determined that it would have affirmed the trial court's summary denial of Carbajal's post-conviction claim on the merits.

Were this Court to determine that the Second District erred in holding that a jurisdictional claim cannot be raised outside Rule 3.850(b)'s two year time limitation, the proper remedy would be to remand to the Second District for consideration on the merits. The Second District, having already having concluded that it would affirm on the merits, would reach the iden-

tical conclusion. Carbajal's unsuccessful post-conviction challenge would remain unchanged.

Petitioner argues (i) that the Second District's opinion improperly allows a procedural rule to confer subject matter jurisdiction on a court and (ii) that public policy should allow a challenge to subject matter jurisdiction at any time. The time limitations which this Court established with Rule 3.850 do not affect the lower court's subject matter jurisdiction. Rather, the Rule relates to the flow of cases within the court system and sets procedural mechanisms for the exercise of Constitutional entitlements. This rule making function is the proper and exclusive province of this Court. Allen v. Butterworth, 756 So. 2d at 63; Art. V, § 2(a), Fla. Const. These time limitations are the focus of both Rule 3.850 and of the Second District's opinion.

As for the public policy question, this Court has expressly directed that the criminal law requires finality. This public policy has been weighed against that a defendant's right to post-conviction review and the resulting balance adopted as Rule 3.850.

CONCLUSION

In conclusion, the State respectfully requests that this Honorable Court find this Court affirm the Second District Court of Appeal.

CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 12-point Courier New, in compliance with Fla. R. App. P. 9.210(a)(2).

Respectfully submitted,
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Sarah Lahlou-Amine, Esq., Fowler, White, Boggs PA, P.O. Box 1438, Tampa, Fl. 333601, this ____ day of November, 2010.

_____
Cerese Crawford Taylor