IN THE SUPREME COURT
STATE OF FLORIDA
TALLAHASSEE, FLORIDA

DAVID CARBAJAL,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

CASE NO.: SC10-466

ON REVIEW FROM THE DISTRICT COURT OF APPEAL
SECOND DISTRICT OF FLORIDA

PETITIONER'S INITIAL BRIEF

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STATEMENT OF THE CASE AND FACTS

Petitioner, David Carbajal, was charged with felony drug offenses pursuant to a ten-count information filed by the Statewide Prosecutor. (R. 10-14).[1] Mr. Carbajal entered a plea of no contest to the charges in 2002 and was sentenced to 155 months in prison. (R. 60, 64-87).

In 2007, Mr. Carbajal filed a motion for postconviction relief. (R. 1-7). His motion was based on the trial court's lack of jurisdiction, a matter he asserted can be raised at any time. (R. 1, 4-6). Specifically, he asserted that the Office of the Statewide Prosecutor that prosecuted his case lacked jurisdiction to do so because all of the acts he was alleged to have committed occurred in a single judicial circuit, the Twentieth Judicial Circuit, Lee County, Florida. (R. 4-5). Mr. Carbajal asserted that when the Office of the Statewide Prosecutor prosecutes a case without jurisdiction to do so, the jurisdiction of the trial court is never invoked. (R. 4-5).

The State challenged Mr. Carbajal's motion on the merits. (R. 15-19). The postconviction court agreed with Mr. Carbajal that a subject matter jurisdiction challenge brought under Rule 3.850 is not subject to any time limitations because subject matter jurisdiction can be raised at any time. (R. 20). However, the postconviction court disagreed with Mr. Carbajal on the merits. (R. 22). It held

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[1] References to the record will be made with the abbreviation, "R.," followed by the appropriate page number(s).

that because the record suggested out-of-state conduct related to the conduct in Lee County, Mr. Carbajal's alleged offenses were "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. 22).

Mr. Carbajal timely appealed to the Second District Court of Appeal. (R. 106). On February 24, 2010, the Second District Court of Appeal affirmed, certifying conflict. (R. 161). It ruled that the two-year statute of limitations applied notwithstanding the nature of Mr. Carbajal's claim as one based on a lack of subject matter jurisdiction. (R. 157-161). Accordingly, it disagreed with the postconviction court and found that Mr. Carbajal's motion raising the jurisdictional challenge was untimely. (R. 157-161). In doing so, it cited conflict with the Third, Fourth, and Fifth District Courts of Appeal, which have held that postconviction relief based on lack of subject matter jurisdiction may be raised at any time. (R. 159, n.2, 161).

The appellate court noted that even if it were to reach the merits, it would have affirmed. (R. 157, n.1). In making this statement, the court again departed from existing precedent, this time the First and Fourth District Courts of Appeal. (R. 157, n.1). It stated, "Contrary to the conclusion reached by our sister courts . . . , we conclude that even if the Statewide Prosecutor did not have jurisdiction to

prosecute the case, the circuit court still had jurisdiction over these felonies." (R. 157, n.1).

Mr. Carbajal sought to invoke this Court's discretionary jurisdiction on March 16, 2010. The parties briefed this Court's jurisdiction, and this Court accepted jurisdiction, requesting briefing on the merits.

SUMMARY OF ARGUMENT

The appellate court erred in disregarding the fundamental principle that a criminal defendant, like all other litigants, may challenge subject matter jurisdiction anytime. When a court acts without jurisdiction, its actions are void. Neither waiver nor consent can cure this fatal defect.

Jurisdiction is conferred only by the will of the people through legislative enactments and the Constitution. A court has no power to confer jurisdiction upon itself or another tribunal, either through a legal ruling or by exercise of this Court's rule-making authority, where such jurisdiction never existed in the first instance.

As a matter of public policy, this Court is being asked to decide whether these widely held legal principles should be *curtailed* solely for criminal defendants, affording them *fewer* rights than other litigants with respect to the ability to raise a subject matter jurisdiction challenge. Where life and liberty are at stake, there is no justification for turning the enduring availability of a subject matter jurisdiction challenge on its head, maintaining the full rights of civil and other litigants while arbitrarily foreclosing those of criminal defendants. Certainly, it is not within the judiciary's purview to take this substantive leap in the law.

Accordingly, this Court should reverse the appellate court's decision and continue to hold that subject matter jurisdiction is a substantive, fundamental matter that remains unaffected by Florida Rule of Civil Procedure 3.850(b).

ARGUMENT

I. STANDARD OF REVIEW

Questions of subject matter jurisdiction are issues of law reviewed *de novo*. *Stanek-Cousins v. State*, 912 So. 2d 43, 48 (Fla. 4th DCA 2005).

II. REVERSAL IS REQUIRED TO PRESERVE THE WELL-ESTABLISHED RULE OF LAW THAT A COURT CANNOT ACT WITHOUT SUBJECT MATTER JURISDICTION.

The conflict certified to this Court involves the appellate court's lone challenge to the fundamental principle that questions of subject matter jurisdiction may be raised anytime. The appellate court certified conflict with the following cases, which have all applied this well-established rule in similar circumstances: *Gunn v. State*, 947 So. 2d 551, 551 (Fla. 4th DCA 2006) ("We agree with the defendant that a trial court should review the merits of a postconviction motion, even if untimely, which raises a jurisdictional issue that was not previously considered on the merits."); *Brown v. State*, 917 So. 2d 272, 273 (Fla. 5th DCA 2005) ("As Brown raised jurisdictional issues in both of his Rule 3.850 motions, the circuit court should have addressed them. Instead, the circuit court erroneously concluded that these issues were untimely presented and either were, or should have been, raised on direct appeal."); *Harris v. State*, 854 So. 2d 703, 705 (Fla. 3d DCA 2003) ("The State argues that the defendant's postconviction motion is time-barred. While this argument finds support in the text of Florida Rule of Criminal Procedure 3.850(a)(2) and (3), case law establishes that the absence of jurisdiction

may be raised at any time."); and *Harrell v. State*, 721 So. 2d 1185, 1186-1187 (Fla. 5th DCA 1998) (holding lack of subject matter jurisdiction is "fundamental defect" that can be raised anytime, and, therefore, petition treated as Rule 3.850 motion could not be dismissed as untimely for failure to raise issue within time limitations imposed by Rule or during proceedings while they were pending). Thus, these cases from the Third, Fourth, and Fifth District Courts of Appeal have all held that because subject matter jurisdiction may be challenged anytime, it cannot be subject to the two-year time limit set forth in Florida Rule of Criminal Procedure 3.850.

In the opinion below, attached hereto as Appendix "A," the appellate court held that a criminal defendant who raises a subject matter jurisdiction challenge must do so within the two-year timeframe set forth in Rule 3.850(b). This is an incorrect and unsustainable view for two reasons: (1) a procedural rule cannot confer subject matter jurisdiction where it never existed—subject matter jurisdiction can be conferred only by constitutional and statutory provisions; and (2) public policy dictates that criminal defendants with life and liberty at stake be granted at least as many rights as civil litigants who are free to raise a subject matter jurisdiction challenge anytime. There is no other basis for affirmance of the appellate court's ruling. Accordingly, this Court should reverse that ruling with

instructions to remand to the trial court to vacate the judgment and sentence and all resulting rulings issued against Mr. Carbajal.

A. Courts Cannot Confer Subject Matter Jurisdiction Where It Does Not Exist in the First Instance.

1. Subject Matter Jurisdiction Is a Fundamental Concern that Goes to the Very Authority of a Court to Act and, Therefore, Can Be Raised Anytime.

"Jurisdiction, simply put, is the inherent power to decide a case." *Oceania Joint Venture v. Ocean View of Miami, Ltd.*, 707 So. 2d 917, 919 (Fla. 3d DCA 1998). Subject matter jurisdiction is conferred upon a court by constitutional or statutory authority. *See State ex rel. Caraker v. Amidon*, 68 So. 2d 403, 405 (Fla. 1953). It is well-established that "subject matter jurisdiction is so vital to a court's power to adjudicate the rights of individuals, that its absence can be questioned at anytime, even after the entry of a final judgment or for the first time on appeal." *84 Lumber Co. v. Cooper,* 656 So. 2d 1297, 1298 (Fla. 2d DCA 1994); *see also Booker v. State*, 497 So. 2d 957, 958 (Fla. 1st DCA 1986) (holding defect in subject matter jurisdiction is fundamental error and can be raised anytime); *Wesley v. State*, 375 So. 2d 1093, 1094 (Fla. 3d DCA 1979) (same). A judgment entered without jurisdiction is also subject to collateral attack. *See Goodrich v. Thompson*, 118 So. 60, 61 (Fla. 1928).

This Court has further described the fundamental nature of subject matter jurisdiction as follows:

> Where judicial tribunals have no jurisdiction of the subject matter on which they assume to act, their proceedings are absolutely void in the strictest sense of the term; and a court which is competent to decide on its own jurisdiction in a given case may determine that question at any time in the proceedings of the cause, whenever that fact is made to appear to its satisfaction, either before or after judgment. Accordingly, an objection for want of jurisdiction, if it exists, may be raised by answer or at any subsequent stage of the proceedings; in fact, it may be raised for the first time on appeal. A court will recognize want of jurisdiction over the subject matter even if no objection is made. Therefore, whenever a want of jurisdiction is suggested, by the court's examination of the case or otherwise, it is the duty of the court to consider it, for if the court is without jurisdiction, it is powerless to act in the case.

Roberts v. Seaboard Sur. Co., 29 So. 2d 743, 748 (Fla. 1947) (*citing* 14 Am. Jur. § 191, p. 385). Thus, the importance of subject matter jurisdiction cannot be understated, as it goes to the very heart of a court's authority to act. That authority can be conferred only by the people through constitutional or statutory grants of jurisdiction. *See id.* at 697-698; *Caraker*, 68 So. 2d at 405.

If, instead, courts were permitted to create their own jurisdiction, the delicate balance between the three branches of government and the very notion of democracy would be brought to a halt. Such a policy would essentially transform the role of the judiciary from an institution created to enforce the will of the people as expressed through duly enacted laws and constitutional provisions, into a creature with the same force as the will of the people, creating and exercising

jurisdiction over persons and matters that were never contemplated in the Constitution or by the legislature. *Cf. State v. Allen*, 790 So. 2d 1122, 1126 (Fla. 2d DCA 2001) (with respect to police power jurisdiction, holding "[i]n the absence of a clear legislative intent to universally expand [it], we do not believe it is the role of the judiciary to do so"). Our system of government has been careful to maintain the balance of power that exists today. This balance is paramount and cannot be dispensed with under any circumstances, let alone for the mere purpose of the convenience that would result from a swift and precise time-bar against *all* motions for postconviction relief.

2. Subject Matter Jurisdiction Is a Substantive, Not Procedural, Matter and, Therefore, Cannot Be Conferred by Judicial Action or the Florida Supreme Court's Rule-Making Authority.

"It has been the historic law of [the state of Florida] that '[s]ubject matter jurisdiction cannot be created by waiver, acquiescence or agreement of the parties, or by error or inadvertance of the parties or their counsel, ***or by the exercise of power by the court***; it is a power that arises solely by virtue of law.'" *84 Lumber Co.*, 656 So. 2d at 1298 (emphasis added) (*quoting Fla. Export Tobacco Co, Inc. v. Dep't of Rev.*, 510 So. 2d 936, 943 (Fla. 1st DCA 1987)); *Metellus v. State*, 900 So. 2d 491, 495 (Fla. 2005) ("A jurisdictional rule cannot be altered by the court or by agreement of the parties.").

The Florida Supreme Court's rule-making authority "is limited to rules governing procedural matters and does not extend to substantive rights." *Oceania Joint Venture*, 707 So. 2d at 920. While the Court's rule-making authority permits it to provide the procedural mechanisms by which substantive rights are addressed, *id.*, this assumes that a court is rightfully acting in the first place. Furthermore, unless specifically delegated to the Florida Supreme Court by the legislature,[2] timeframes within which rights may be asserted are substantive in nature and are not within the purview of the Court's rule-making authority. *See id.*; *Boyd v. Becker*, 627 So. 2d 481, 484 (Fla. 1993) (holding Court's rule-making authority limited to procedural, not substantive matters).

In fact, where a requirement is "enacted by rule of court, rather than by statute or constitution, it simply cannot be construed as being jurisdictional in nature." *Id.* Thus, the judiciary cannot confer jurisdiction upon itself, either through a legal ruling or through the exercise of its rule-making authority. *See 84 Lumber Co.*, 565 So. 2d at 1298; *Metellus*, 900 So. 2d at 495.

To the extent Florida Rule of Criminal Procedure 3.850(b) purports to impose a time limitation for challenging a court's subject matter jurisdiction, it

[2] For example, the creation of deadlines for invoking appellate jurisdiction (not continued jurisdiction in the trial court, as we have here, or collateral attack proceedings) has been delegated to the Florida Supreme Court. *See id.* at 920, 920 n.1.

seeks to eradicate substantive law and improperly confer jurisdiction where it did not exist before. The grant of jurisdiction to hail parties into court and hold binding proceedings that adjudicate their interests, including those of life and liberty, is a privilege reserved for the people by constitution or statute. *See Caraker*, 68 So. 2d at 405. If this is indeed what Rule 3.850(b) seeks to do, it cannot stand with respect to subject matter jurisdiction challenges. Any changes to the law in this regard can be made only by the legislature or through constitutional amendment.

3. The Subject Matter Jurisdiction Claimed to Have Been Invoked in this Case Was Based on the Office of the Statewide Prosecutor's Constitutional and Statutory Authority to File an Information to Invoke the Trial Court's Jurisdiction.

Jurisdiction of the trial court in this case was premised on the constitutional and corresponding statutory provisions governing the Office of the Statewide Prosecutor. Article IV, Section 4(b), of the Florida Constitution provides, in pertinent part, as follows:

> The statewide prosecutor shall have concurrent jurisdiction with the state attorneys to prosecute violations of criminal laws occurring or having occurred, in two or more judicial circuits as part of a related transaction, or when any such offense is affecting or has affected two or more judicial circuits as provided by general law.

The applicable statute mirrors the constitutional provision, providing, in pertinent part, as follows:

> The office shall have such power only when any such offense is occurring, or has 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. Informations or indictments charging such offenses shall contain general allegations stating the judicial circuits and counties in which crimes are alleged to have occurred or the judicial circuits and counties in which crimes affecting such circuits or counties are alleged to have been connected with an organized criminal conspiracy.

§ 16.56, Fla. Stat.

Where a Statewide Prosecutor files an information against a defendant, the trial court's jurisdiction depends upon the Statewide Prosecutor's jurisdiction pursuant to the above provisions. *Brown*, 917 So. 2d at 273; *see also See Luger v. State*, 983 So. 2d 49, 50 (Fla. 4th DCA 2008); *Winter v. State*, 781 So. 2d 1111, 1114-1115 (Fla. 1st DCA 2001). The trial court's jurisdiction is also a separate constitutional matter, as Article I, Section 15(a), of the Florida Constitution ties a court's authority to try a defendant who has been accused of a felony to the proper filing of "an information under oath . . . by the prosecuting officer of the court." *See Sadler v. State*, 949 So. 2d 303, 305 (Fla. 5th DCA 2007) (holding court's jurisdiction to try an accused depends on information having been duly filed). This prerequisite is listed in the Florida Constitution's Declaration of Rights and is a constitutional right of every criminal defendant charged with a felony in a Florida court. Art. I, § 15. An information that is null and void for lack of subject matter jurisdiction cannot satisfy this requirement.

4. Florida Rule of Criminal Procedure 3.850(b) Cannot Bar Consideration of a Subject Matter Jurisdiction Challenge Because Such a Challenge Can Be Raised Anytime.

Rule 3.850 purports to provide the procedural mechanisms by which a defendant may challenge a court's "jurisdiction to enter the judgment" or "jurisdiction to enter the sentence," or assert that "[t]he judgment or sentence is otherwise subject to collateral attack." Fla. R. Crim. P. 3.850(a)(2)-(3). The Rule provides further that it "does not authorize relief based on grounds that could have or should have been raised at trial and, if properly preserved, on direct appeal of the judgment and sentence." Fla. R. Crim. P. 3.850(c). Subsection (b) of the Rule sets forth time limits for making challenges encompassed by the Rule. It provides, in pertinent part, that a motion filed under the Rule may not be filed "more than 2 years after the judgment and sentence become final in a noncapital case." Fla. R. Crim. P. 3.850(b). This time limit, along with the limiting language of subsection (c), was added by amendment in 1984.[3] *In re Amendment to Rules of Crim. Pro. (Rule 3.850)*, 460 So. 2d 907 (Fla. 1984).

The above language addressing challenges as to "jurisdiction" under the Rule does not specify that it is referring to *subject matter* jurisdiction. In this

[3] Case law predating this amendment that addresses the perpetual ability to raise a subject matter jurisdiction challenge is nevertheless instructive. This is because such case law tends to address broader principles of the constitutionally- and statutorily-derived nature of subject matter jurisdiction and the fundamental error inherent in judicial acts in excess of such jurisdiction.

regard, the language in subsection (c) of the Rule provides that relief is unauthorized where it is based on grounds that even *could have* been raised at trial or on direct appeal. As discussed above, it is well-established that failure to raise subject matter jurisdiction at trial or on direct appeal cannot waive the availability of such challenge. § II.A.1., *supra*. Accordingly, it is quite possible subject matter jurisdiction was not even contemplated when the Rule was promulgated.

Indeed, the cases with which the appellate court cited conflict are in agreement that a subject matter jurisdiction challenge is not subject to the two-year time limit set forth in Florida Rule of Criminal Procedure 3.850(b). *Gunn*, 947 So. 2d at 551; *Brown*, 917 So. 2d at 273; *Harris*, 854 So. 2d at 705; and *Harrell*, 721 So. 2d at 1186-1187. Thus, while the time limits set forth in this Rule apply to other defects in a judgment, they cannot apply where, as here, the judgment is void *ab initio* based on the trial court's lack of authority to act in the first instance.

The appellate court listed only a few of the numerous cases with which its opinion conflicts. In addition to the cases from the Third, Fourth, and Fifth District Courts of Appeal that the appellate court mentioned, several other cases, including cases from the Second District Court of Appeal, have recognized a criminal defendant's right to raise a subject matter jurisdiction challenge outside the strictures or timeframes set forth in Rule 3.850. *See, e.g., State v. Billie*, 497 So. 2d 889, 890 (Fla. 2d DCA 1986) (holding that, although unauthorized under the

Rules of Criminal Procedure, defendant's motion for rehearing required consideration on the merits because it raised subject matter jurisdiction challenge); *Waters v. State*, 354 So. 2d 1277, 1278 (Fla. 2d DCA 1978) (permitting defendant's subject matter jurisdiction challenge raised after entry of order modifying probation where defendant failed to raise subject matter jurisdiction in proceedings on original judgment); *Davis v. State*, 998 So. 2d 1196, 1196 (Fla. 1st DCA 2009) (holding court erred in dismissing defendant's Rule 3.850 motion as untimely and successive because motion raised subject matter jurisdiction challenge, which can be asserted anytime); *Smith v. State*, 11 So. 3d 473, 474 (Fla. 5th DCA 2009) (holding defendant's challenge against trial court's subject matter jurisdiction based on challenge as to Statewide Prosecutor's jurisdiction should not have been dismissed because it had not been waived).

B. Public Policy Compels Reversal of the Appellate Court's Ruling, Which Unfairly Singles Out Criminal Defendants by Judicial Act to Afford Them Fewer Rights Than All Other Litigants.

While it is well-established that parties may raise a defect in subject matter jurisdiction after any otherwise applicable time limitations, the court below has suggested that criminal defendants alone should be subject to a special restriction on this right. The appellate court held that criminal defendants who do not assert a subject matter jurisdiction challenge within two years of the judgment at issue are

somehow substantively bound by that judgment even if it was entered against them without the trial court's jurisdictional authority to act.

The appellate court's ruling creates a disparity in the law that favors civil and other litigants over criminal defendants. Despite the appellate court's ruling, civil litigants can continue to freely raise a subject matter jurisdiction challenge against a judgment entered without judicial authority. In fact, the appellate court's ruling would allow the State to benefit from the rule that subject matter jurisdiction can be raised anytime and cannot be waived, while depriving criminal defendants from raising the corresponding challenge after a period of two years. *Cf. State v. Yaros*, 728 So. 2d 1201, 1202 (Fla. 2d DCA 1999) (holding where case was adjudicated in county court without jurisdiction, State could not be deemed to have waived challenge to county court's jurisdiction because subject matter jurisdiction could never be waived, such that State's right to bring subsequent action in circuit court remained intact). This result is unsustainable as a matter of public policy.

C. No Other Grounds Justify Affirmance of the Appellate Court's Ruling.

1. The Record Provides No Basis for the Statewide Prosecutor's Jurisdiction.

The State has previously argued that the Office of the Statewide Prosecutor had jurisdiction in this case because the record demonstrates that the investigation that led up to Mr. Carbajal's charges and arrest implicated his alleged activity other

states. There is no legal basis for this argument. The Office of the Statewide Prosecutor has jurisdiction to act when the information reveals *multi-circuit* criminal activity, meaning activity within two or more *judicial circuits*. *See* Art. IV, § 4(b); § 16.56, Fla. Stat.

Subject matter jurisdiction generally must be established on the face of the information. *See Zanger v. State*, 548 So. 2d 746, 748 (Fla. 4th DCA 1989); *Davis v. State*, 376 So. 2d 1224, 1224 (Fla. 2d DCA 1979). If the information does not establish the applicable constitutional and/or statutory elements necessary to invoke subject matter jurisdiction, it is defective and may be challenged at any time. *See Davis*, 376 So. 2d at 1224. Such a defect cannot be waived. *See 84 Lumber Co. v. Cooper*, 656 So. 2d at 1298; *Waggy v. State*, 935 So. 2d 571, 573 (Fla. 1st DCA 2006) (holding entry of plea does not foreclose later claim premised on trial court's lack of subject matter jurisdiction); *Harrell*, 721 So. 2d at 1187 (same).

A general allegation by the Statewide Prosecutor that more than one judicial circuit is involved is insufficient, particularly in the face of a subject matter jurisdiction challenge where the record otherwise establishes that only one circuit was implicated. *Winter*, 781 So. 2d at 1116 (finding no record evidence of criminal activity in more than one of Florida's judicial circuits to support Statewide Prosecutor's jurisdiction, and reversing convictions and sentences

accordingly); *Luger*, 983 So. 2d at 50-51 (reversing and remanding for further proceedings where information did not establish facts supporting subject matter jurisdiction and record did not address the issue).

In this case, the record reveals that all criminal activity for which Mr. Carbajal was charged took place in one judicial circuit—the judicial circuit in and for Lee County. There is no evidence of criminal activity in any of Florida's other judicial circuits. Evidence of activity in other states or countries does not invoke a *Florida* Statewide Prosecutor's jurisdiction, as such states or countries do not constitute the "judicial circuits" referenced in the applicable constitutional and statutory provisions. *See* Art. IV, § 4(b), Fla. Const.; § 16.56, Fla. Stat.

2. Where a Statewide Prosecutor Lacks Jurisdiction, the Trial Court's Jurisdiction Is Never Properly Invoked.

"If the Office of the Statewide Prosecutor files an information but lacks jurisdiction to prosecute a case, then the trial court's jurisdiction is not properly invoked." *Brown*, 917 So. 2d at 273; *see also See Luger*, 983 So. 2d at 50; *Winter*, 781 So. 2d at 1114-1115. This result is required pursuant to the constitutional and statutory sources of jurisdiction invoked by the Statewide Prosecutor and the courts upon the filing of a duly executed information. Art. IV, § 4(b), Fla. Const.; Art. I, § 15, Fla. Const.; § 16.56, Fla. Stat. Thus, where the Statewide Prosecutor files an

information, but lacks jurisdiction to do so, all resulting actions, including all orders and judgments against the defendant, are null and void.

In *Zanger v. State*, the court analogized the subject matter jurisdiction of the Statewide Prosecutor to that of the Statewide Grand Jury, which is also grounded in statute. 548 So. 2d at 747-749. *Zanger* observed that in both cases, where the charging document does not establish multi-circuit/county activity, it is jurisdictionally defective. *Id.*; *see McNamara v. State*, 357 So. 2d 410, 414 (Fla. 1978) (applying similar reasoning in case involving Statewide Grand Jury's jurisdiction and holding that absent allegations of multi-county activity on face of indictments, Statewide Grand Jury had no authority to properly indict defendant); *State v. Ostergard*, 343 So. 2d 874, 877 (Fla. 3d DCA 1977) (same).

In *McNamara*, this Court applied the reasoning of Judge Barkdull's concurrence in *Ostergard*. 357 So. 2d at 414. That concurrence aptly observes that a Statewide Grand Jury "has no more right to indict for a crime committed in a single county than a Grand Jury for the Eleventh Judicial Circuit in and for Dade County would have the right to indict for a crime committed in the Broward Circuit." *Ostergard*, 343 So. 2d at 877. The same is true here with respect to the Statewide Prosecutor's lack of jurisdiction over criminal conduct alleged to have occurred in only one of Florida's judicial circuits.

In footnote 1 of its opinion, the appellate court posits in *dicta* that the trial court could have had jurisdiction even if the Statewide Prosecutor did not. The appellate court recognizes that this notion is "[c]ontrary to the conclusion reached by [its] sister courts," but parts from established precedent on this point without any supporting analysis. Under the clear analysis of *Brown*, *Luger*, and *Winter*, and in light of their constitutional underpinnings, this suggestion is without any support in the law.[4]

There is simply no authority for retreating from the well-established law that the Office of the Statewide Prosecutor's limited scope, when not properly invoked, is fatal to a court's ability to act. To hold otherwise would fly in the face of fundamental constitutional and statutory provisions governing courts' jurisdiction. Such provisions cannot be overlooked or overruled in judicial proceedings.

[4] This case is unlike *Bolden v. State*, 832 So. 2d 153, 156 (Fla. 2d DCA 2002), where the defendant challenged the Statewide Prosecutor's authority to prosecute a matter after jurisdiction had been properly invoked through the filing of an information by the state attorney for the circuit in which the action was brought, but the state attorney later appointed a prosecutor from the Office of the Statewide Prosecutor to act as a special assistant state attorney in the prosecution. The issue the defendant raised in *Bolden* was thus the Office of the Statewide Prosecutor's delegated *authority* to handle the prosecution, not its *jurisdiction to initiate the criminal action in the first instance*. *Id.*

CONCLUSION

Based on the foregoing reasons, Petitioner, David Carbajal, respectfully requests that this Court reverse the decision of the Second District Court of Appeal with instructions to remand to the trial court to vacate the judgment and sentence and all resulting rulings entered against Mr. Carbajal without jurisdiction, along with any further relief deemed just and appropriate in this matter.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 17, 2010, a true and accurate copy of the foregoing has been furnished by U.S. Mail to:

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CERTIFICATE OF COMPLIANCE

I HERBY CERTIFY that this brief complies with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

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