

IN THE SUPREME COURT OF FLORIDA

DAVID CARBAJAL,  
Petitioner,

v.

STATE OF FLORIDA,  
Respondent.

Case No.: SC10-466

DCA NO.: 2D07-5894

ON PETITION FOR REVIEW FROM  
THE SECOND DISTRICT COURT OF APPEAL  
STATE OF FLORIDA

JURISDICTIONAL BRIEF OF RESPONDENT

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**STATEMENT OF THE CASE AND FACTS**

The pertinent history and facts are set out in the decision of the lower tribunal. Carbajal v. State, 28 So.3d 187 (Fla. 2d DCA 2010). (See attached Appendix).

### SUMMARY OF THE ARGUMENT

Respondent submits there is no express and direct conflict between the decision of the Second District Court of Appeal in Carbajal v. State, 28 So.3d 187 (Fla. 2d DCA 2010), and the decisions in Gunn v. State, 947 So.2d 551 (Fla. 4th DCA 2006), Brown v. State, 917 So.2d 272 (Fla. 5th DCA 2005), Harris v. State, 854 So.2d 703 (Fla. 3d DCA 2003), and Harrell v. State, 721 So.2d 1185 (Fla. 5th DCA 1998) thus, discretionary jurisdiction for review is not warranted.

## ARGUMENT

WHETHER THE SECOND DISTRICT COURT OF APPEAL DECISION IN CARBAJAL V. STATE, 28 SO.3D 187 (FLA. 2D DCA 2010), EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISIONS IN GUNN V. STATE, 947 SO.2D 551 (FLA. 4TH DCA 2006), BROWN V. STATE, 917 SO.2D 272 (FLA. 5TH DCA 2005), HARRIS V. STATE, 854 SO.2D 703 (FLA. 3D DCA 2003), AND HARRELL V. STATE, 721 SO.2D 1185 (FLA. 5TH DCA 1998).

### I. Standard of Review:

Under the Florida Constitution, article V, section 3(b)(3), this Court has the authority to review a decision of a district court of appeal that expressly and directly conflicts with a decision of this Court or another district court of appeal.

This Court has identified two basic forms of decisional conflict which properly justify the exercise of jurisdiction under section 3(b)(3) of the Florida Constitution. Either (1) where an announced rule of law conflicts with other appellate expressions of law, or (2) where a rule of law is applied to produce a different result in a case which involves "substantially the same controlling facts as a prior case. . . ." Nielsen v. City of Sarasota, 117 So.2d 731, 734 (Fla. 1960).

### II. Argument:

Respondent submits that the decisions in Gunn, Brown, Harris, and Harrell do not expressly and directly conflict with Cabajal. The district courts in Gunn, Brown, Harris, and Harrell relied on valid precedent in finding that jurisdictional issues could be raised at anytime, however, in Cabajal the Second District Court of

Appeal relied exclusively on Florida Rule of Criminal Procedure 3.850(b) for holding that Petitioner's motion for post-conviction relief arguing that the Office of Statewide Prosecution did not have jurisdiction was untimely filed more than two years after judgment and sentence became final. No other court has expressly and directly examined the time limitations of the Rule in the same context and found it inapplicable. By its own terms, the Second District Court of Appeal recognized that no other court has plainly addressed the language of this Rule.

We do not find these cases persuasive because they do not explain why they apparently concluded that the two-year limit in rule 3.850 did not extinguish the defendant's right to raise the issue of the circuit court's jurisdiction.

Cabajal, 28 So.3d at 189. Therefore, there is no express and direct conflict.

**CONCLUSION**

Respondent respectfully requests that this Honorable Court deny review in that there is no "express and direct" conflict jurisdiction and no other valid legal grounds for discretionary jurisdiction to be exercised by the Court.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to David Carbajal, *pro se*, #Y17244, Avon Park Correctional Institution, P.O. Box 1100, Avon Park, FL 33826-1100, on this 17th day of May, 2010.

**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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