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IN THE SUPREME COURT OF FLORIDA

Case no.: SC10-466

PROVIDED TO AVON PARK
CORRECTIONAL INSTITUTION
ON 4/26/10 FOR MAILING.
DC

DAVID CARBAJAL,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

ORIGINAL

PETITIONER'S JURISDICTIONAL BRIEF

On Review from the District Court of Appeal
Second District of the State of Florida

DAVID CARBAJAL # Y17244
Avon Park Correctional Institution
P.O. Box 1100
Avon Park, FL 33826-1100

Petitioner In Propria Persona

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STATEMENT OF THE CASE AND FACTS

The Office of the Statewide Prosecutor filed a ten-count information charging David Carbajal with a variety of drug offenses. In 2002, Carbajal entered a *nolo contendere* plea to the charges and was sentenced to 155 months in prison. He did not appeal his judgment or sentence. On February 15, 2007, Carbajal filed a motion for postconviction relief under Florida Rule of Criminal Procedure 3.850 alleging that the circuit court did not have jurisdiction to enter his judgment and sentence. He contended that the circuit court's jurisdiction was never properly invoked because "all of the crimes alleged and all of the actions pertinent to those crimes" occurred in a single judicial circuit, and thus, the Statewide Prosecutor did not have jurisdiction to prosecute the case.

Acknowledging that he filed his rule 3.850 motion more than two-years after his judgment and sentence became final, Carbajal asserted that it should not be denied as untimely because it challenged the jurisdiction of the circuit court, a matter he contended may be raised at any time. The postconviction court, relying on *Brown v. State*, 917 So.2d 272 (Fla. 5th DCA 2005), agreed and then denied the motion on the merits.

Although the Second District Court of Appeal affirmed, it did so without reaching the merits of the rule 3.850 motion because it concluded that the motion

was untimely, The Court acknowledged that its opinion conflicted with decisions reached in its sister courts of the 3rd, 4th, and 5th District Courts of Appeal.

Ultimately, this appeal follows.

SUMMARY OF THE ARGUMENT

In this case, the Second District Court of Appeal held that a defendant's motion for postconviction relief was subject to the two-year time limit for filing such motions, even though the motion alleged that the trial court lacked jurisdiction to enter his conviction and sentence. The Second District Court's basis for affirmance was that it interpreted rule 3.850 as contemplating challenges to the trial court's jurisdiction, but did not excuse such challenges from the two-year limitation in rule 3.850(b).

The decision of the District Court cannot be reconciled with the previous decisions of the three other District Courts of Florida found in *Gunn v. State*, 947 So.2d 551 (Fla. 4th DCA 2006); *Brown*, 917 So.2d at 273; *Harris v. State*, 854 So.2d 703 (Fla. 3d DCA 2003); and *Harrell v. State*, 721 So.2d 1185 (Fla. 5th DCA 1998), wherein the Courts interpreted the two-year time limitation in rule 3.850(b) as inapplicable to a motion alleging that the circuit court lacked jurisdiction to enter the defendant's judgment and sentence.

Thus, the Petitioner contends that the decision of the Second District Court of Appeal expressly and directly conflicts with previous rulings of the 3rd, 4th, and 5th District Courts of Appeal.

JURISDICTIONAL STATEMENT

The Florida Supreme Court has discretionary jurisdiction to review a decision of a district court of appeal that expressly and directly conflict with the decision of the supreme court or another district court of appeal on the same points of law. *Art. V, §3(b)(3) Fla.Const. (1980); Fla.R.App.P. 9.030(a)(2)(A)(iv).*

ARGUMENT

THE DECISION OF THE SECOND DISTRICT COURT OF APPEAL IN THIS CASE EXPRESSLY AND DIRECTLY CONFLICTS WITH THE PREVIOUS DECISIONS OF THE 3RD, 4TH, AND 5TH DISTRICT COURTS OF APPEAL.

In the decision of the Second District Court, reported as *Carbajal v. State*, 28 So.3d 187 (Fla. 2d DCA 2010) (Appendix A), the decision of the postconviction court was affirmed, albeit for a reason unrelated to the merits of the 3.850 motion. The Second District Court opined:

The rule specifically contemplates a motion asserting a claim grounded on the circuit court's lack of jurisdiction. Nevertheless, 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 . . .

Although the rule makes no exception for a motion claiming he circuit court did not have jurisdiction to enter the judgment or sentence, it does list three circumstances under which any motion can be filed beyond the two-year limit. *See* Fla.R.Crim.P. 3.850(b)(1)-(3). Carbajal's motion, however, does not allege any of those circumstances. Accordingly, his motion was untimely.

We recognize that other courts have held that the two-year time limitation in rule 3.850(b) is inapplicable to a motion alleging that the circuit court lacked jurisdiction to enter the defendant's judgment or sentence.¹

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.

¹ We acknowledge that our decision conflicts with these cases and accordingly certify conflict.

While we are well aware of the body of law that holds that the court's jurisdiction may be challenged at any time, we have found nothing that suggests we can ignore the two-year limit contained in rule 3.850.

Carbajal, 28 So.3d at 188-189.

The Second District Court of Appeal's decision is in direct conflict with the decisions of other District Courts; *i.e.* *Gunn v. State*, 947 So.2d 551 (Fla. 4th DCA 2006); *Brown*, 917 So.2d at 273; *Harris v. State*, 854 So.2d 703 (Fla. 3^d DCA 2003); and *Harrell v. State*, 721 So.2d 1185 (Fla. 5th DCA 1998), wherein those cases expressly stated:

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. *See Brown v. State*, 917 So.2d 272 (Fla. 5th DCA 2005) (reversing summary denial of rule 3.850 motion, and holding that the trial court was required to address the merits of defendant's motions for postconviction relief where they raised jurisdictional issues that were not previously raised, as a void judgment may be collaterally attacked at any time.

Gunn, 947 So.2d at 551.

These courts correctly interpreted the point of law in question and, as a result of the Second District Court's erroneous interpretation, the Petitioner could

not cite to, nor legitimately present to this Court, the additional conflict that arose regarding the merits of his claim, also necessitating discretionary review.²

As such, this Court should reaffirm the decisions raised in the 3rd, 4th, and 5th District Courts by accepting discretionary review and quashing the contrary decision of the Second District Court below.

CONCLUSION

This Court has discretionary jurisdiction to review the decision below, and therefore, this Court ought to exercise that jurisdiction to consider the merits of the Petitioner's argument.

Respectfully submitted,

David Carbajal

DAVID CARBAJAL # y17244

Avon Park Correctional Institution

P.O. Box 1100

Avon Park, FL 33826-1100

Petitioner *In Propria Persona*

² See *Carbajal*, 28 So.3d at 188 n.1 (“Were we to reach the merits, we nevertheless would affirm. Contrary to the conclusion reached by our sister courts in *Luger* and *Winter*, 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.”).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document has been furnished, via U.S. mail to Elba Caridad Martin, Assistant Attorney General, Office of the Attorney General, Concourse Center Four, 3507 E. Frontage Road, Ste. 200, Tampa, Florida 33607, by placing it in the hands of Avon Park Correctional Institution officials on this 26 day of April, 2010.

David Carabajal
DAVID CARBAJAL # Y17244

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the font requirements of rule 9.210(a)(2) of the Florida Rules of Appellate Procedure using New Times Roman 14-point font.

David Carabajal
DAVID CARBAJAL # Y17244