

IN THE SUPREME COURT OF FLORIDA

CASE NO.

CARL LEGGETT, JR.,

Petitioner,

-vs-

STATE OF FLORIDA,

Respondent.

ON PETITION FOR DISCRETIONARY REVIEW FROM
THE DISTRICT COURT OF APPEAL OF FLORIDA,
THIRD DISTRICT

BRIEF OF PETITIONER ON JURISDICTION

CARLOS J. MARTINEZ
Public Defender
Eleventh Judicial Circuit of Florida
1320 N.W. 14th Street
Miami, Florida 33125
(305) 545-1961

AMY WEBER
Assistant Public Defender
Florida Bar No. 0662151

Counsel for Petitioner

TABLE OF CONTENTS

	PAGE
TABLE OF AUTHORITIES	ii
INTRODUCTION	1
STATEMENT OF THE CASE AND FACTS	1
SUMMARY OF ARGUMENT	2
ARGUMENT	3
THE DECISION OF THE THIRD DISTRICT COURT OF APPEAL IN THE PRESENT CASE EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF THE FIRST DISTRICT COURT OF APPEAL IN <i>Montgomery v. State</i> , 34 Fla. L. Weekly D360 (Fla. 1st DCA Feb. 12, 2009).	3
CONCLUSION	6
CERTIFICATE OF SERVICE	6
CERTIFICATE OF COMPLIANCE	7

TABLE OF CITATIONS

CASES

Bonilla v. State,
23 So.3d 1256 (Fla. 3d DCA 2009)1,4,5

Leggett v. State,
No. 3D09-740 (Fla. 3d DCA March 10, 2010)1

Montgomery v. State,
34 Fla.L.Weekly D360 (Fla. 1st DCA February 12, 2009)2,3,4

Valdes-Pino v. State,
23 So.3d 871 (Fla. 3d DCA 2009)1,4,5

Zeigler v. State,
18 So.3d 1239 (Fla. 2d DCA 2009)2,4

INTRODUCTION

This is a petition for discretionary review of the decision of the Third District Court of Appeal in *Leggett v. State*, No. 3D09-740 (Fla. 3d DCA March 10, 2010), on the grounds of express and direct conflict of decisions. In this brief of petitioner on jurisdiction, all references are to the attached appendix, identified as “A.” followed by the page number.

STATEMENT OF THE CASE AND FACTS

Following a jury trial, the petitioner, Carl Leggett, Jr., was convicted of second-degree murder in February of 2006. (A. 2). He filed a petition for writ of habeas corpus with the Third District Court of Appeal, alleging ineffective assistance of appellate counsel. (A. 2). In his petition, he alleged that his appellate counsel was ineffective for failing to raise the claim that the standard jury instruction on manslaughter by intentional act, a lesser-included offense of second-degree murder, is fundamental error. (A. 2).

The Third District Court of Appeal denied petitioner’s claim, citing its prior decisions which held that there is no fundamental error in the giving of the standard manslaughter instruction. (A. 2); *see Valdes-Pino v. State*, 23 So.3d 871 (Fla. 3d DCA 2009); *Bonilla v. State*, 23 So.3d 1256 (Fla. 3d DCA 2009). In doing so, it certified direct conflict with the decision of the First District Court of

Appeal in *Montgomery v. State*, 34 Fla. L. Weekly D360 (Fla. 1st DCA February 12, 2009), review granted by *State v. Montgomery*, 11 So.3d 943 (Fla. 2009).

(A.2).

SUMMARY OF ARGUMENT

In this and other cases, the Third District Court of Appeal has held that the giving of the standard manslaughter instruction is not fundamental error. This holding is in agreement with the decision of the Second District Court of Appeal in *Zeigler v. State*, 18 So.3d 1239 (Fla. 2d DCA 2009) and in direct conflict with the decision of the First District Court of Appeal in *Montgomery v. State*, 34 Fla. L. Weekly D360 (Fla. 1st DCA February 12, 2009), review granted by *State v. Montgomery*, 11 So.3d 943 (Fla. 2009). This Court should accept jurisdiction in this case to resolve the conflict generated by the decisions of the First, Second and Third District Courts of Appeal as to whether the giving of the standard manslaughter instruction is fundamental error.

ARGUMENT

THE DECISION OF THE THIRD DISTRICT COURT OF APPEAL IN THE PRESENT CASE EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF THE FIRST DISTRICT COURT OF APPEAL IN *Montgomery v. State*, 34 Fla. L. Weekly D360 (Fla. 1st DCA February 12, 2009)

In *Montgomery v. State*, 34 Fla. L. Weekly D360 (Fla. 1st DCA February 12, 2009), review granted by *State v. Montgomery*, 11 So.3d 943 (Fla. 2009), the First District Court of Appeal held that the giving of the standard instruction on manslaughter by intentional act, as a lesser-included offense of second-degree murder, is fundamental error. The standard manslaughter instruction provided that the State must prove two things: first, “that [the victim] is dead and, secondly, that [the defendant] intentionally caused her death.” *Id.* The trial court in *Montgomery* included additional language, also consistent with the standard jury instruction for manslaughter, that “[i]n order to convict of manslaughter by intentional act it is not necessary for the state to prove that the defendant had a premeditated design to cause death.” *Id.*

When it considered the instruction as a whole, the First District Court of Appeal determined that, because there was no direct language in the instruction distinguishing the intent to commit a criminal act, which is required to prove manslaughter, from the intent to kill, which is not, “[t]he average juror would likely interpret the instruction as requiring an intent to kill.” *Id.* Therefore, the

instruction “improperly imposed an additional element on the lesser-included offense of manslaughter.” *Id.*

Because the jury “may not have returned a verdict as to [this] lesser-included offense because it found there was insufficient proof of intent to kill,” the First District Court of Appeal held that the error “taints the underlying fairness of the entire proceeding.” *Montgomery*, quoting *Hankerson v. State*, 831 So.2d 235, 237 (Fla. 1st DCA 2002), and is fundamental.

In *Zeigler v. State*, 18 So.3d 1239 (Fla. 2d DCA 2009), the Second District Court of Appeal disagreed with the analysis in *Montgomery*, *supra*, and held that the standard manslaughter instruction was an accurate statement of the law. Acknowledging that the standard instruction does require proof that the defendant “intentionally caused the death” of the victim, the Second District Court of Appeal supported its conclusion that the instruction was not erroneous by noting, “the instruction does not end there.” *Zeigler*, 18 So.3d at 1245. It explained,

Instead, it [the instruction] continues and states that to convict of “manslaughter by *intentional act*” the State is *not* required to prove “that the defendant had a *premeditated intent* to cause death.” Thus, the totality of the instruction conveys to the jury that it is the *act* that must be intentional and that no intent to cause death is necessary.

Id. (emphasis in original).

The Third District Court of Appeal indicated its agreement with *Zeigler* in *Valdes-Pino v. State*, 23 So.3d 871 (Fla. 3d DCA 2009) and *Bonilla v. State*, 23

So.3d 1256 (Fla. 3d DCA 2009). In both of those decisions, the court, citing *Zeigler*, held that the standard manslaughter instruction given by the trial court did not constitute fundamental error. *Id.* The Third District reaffirmed this holding in the present case and again certified direct conflict with the decision in *Montgomery*.

It is respectfully submitted that this Court should accept jurisdiction to resolve the conflict generated by the Third District's decision in this case and establish a uniform rule as to whether the giving of the standard manslaughter instruction constitutes fundamental error.

CONCLUSION

Based on the foregoing facts, authorities and arguments, petitioner respectfully requests this Court to exercise its discretionary jurisdiction to review the decision of the Third District Court of Appeal.

Respectfully submitted,

CARLOS J. MARTINEZ
Public Defender
Eleventh Judicial Circuit of Florida
1320 NW 14th Street
Miami, Florida 33125
(305) 545-1961

By: _____

AMY WEBER
Assistant Public Defender
Florida Bar No. 0662151

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Brief of Petitioner on Jurisdiction was delivered by hand to the Office of the Attorney General, Criminal Division, 444 Brickell Avenue, Suite 650, Miami, FL 33131, on March 18, 2010.

AMY WEBER
Assistant Public Defender
Florida Bar No. 0662151

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief was prepared using Times New Roman 14-point font, and so is in compliance with Rule 9.210(a)(2).

AMY WEBER