

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC10-63
DCA CASE NO. 3D08-1417

JOHN VALDES-PINO,

Petitioner,

-vs-

STATE OF FLORIDA

Respondent.

ON APPEAL FROM
THE THIRD DISTRICT COURT OF APPEAL OF FLORIDA

BRIEF OF RESPONDENT ON JURISDICTION

BILL McCOLLUM
Attorney General
Tallahassee, Florida

RICHARD L. POLIN
Miami Bureau Chief
Florida Bar No. 0230987

FORREST L. ANDREWS, JR.
Assistant Attorney General
Florida Bar No. 17782
Attorneys for the State of Florida
Office of the Attorney General
444 Brickell Avenue, Suite 650
Miami, FL 33131
Telephone:(305) 377-5441
Facsimile: (305) 377-5655

TABLE OF CONTENTS

TABLE OF CITATIONS2

STATEMENT OF THE CASE AND FACTS4

SUMMARY OF THE ARGUMENT5

ARGUMENT6

RESPONDENT CONCEDES THAT THE
DECISION OF THE THIRD DISTRICT
COURT EXPRESSLY AND DIRECTLY
CONFLICTS WITH THE FIRST
DISTRICT’S OPINION IN MONTGOMERY
V. STATE.

CONCLUSION7

CERTIFICATE OF SERVICE7

CERTIFICATE REGARDING FONT SIZE AND TYPE.....8

TABLE OF CITATIONS

FLORIDA CASES

Allstate Ins. Co. v. Titusville Total Health Care, 848 So.2d 1166 (Fla. 5th DCA 2003).....6

Montgomery v. State, 2009 WL 350624 (Fla. 1st DCA Feb. 12, 2009) 5-6

Reaves v. State, 485 So. 2d 829, 830 n. 3 (Fla. 1986).....4

State v. Montgomery, 11 So.3d 943 (Fla. 2009) 5-6

Valdes-Pino v. State, 2009 WL 4928030 (Fla. 3d DCA Dec. 23, 2009)..... 5-6

FLORIDA CONSTITUTION

Article V, § 3(b)(3), Fla. Const.....6

Article V, § 3(b)(4), Fla. Const.....6

STATEMENT OF THE FACTS AND THE CASE

Petitioner, John Valdes-Pino, was the defendant in the trial court and Appellant in the District Court of Appeal, Third District. Respondent, the State of Florida, was the prosecution in the trial court and the Appellee in the District Court of Appeal, Third District.

Respondent rejects the Statement of Case and Facts as set forth in the Petitioner's Brief on Jurisdiction, as it includes facts which go beyond the four corners of the lower court's decision. See Reaves v. State, 485 So. 2d 829, 830 n.3 (Fla. 1986).

The decision of the Third District Court of Appeal, dated December 23, 2009, stated, the following, in its entirety:

John Valdes-Pino appeals his conviction for second-degree murder asserting fundamental error in the manslaughter instruction given to the jury. We affirm the conviction.

On the record presented, we find that the then-standard instructions given by the trial court (without objection) did not constitute fundamental error. Zeigler v. State, 34 Fla. L. Weekly D2074 (Fla. 2d DCA Oct. 9, 2009). However, because the contrary analysis in Montgomery v. State, 34 Fla. L. Weekly D360 (Fla. 1st DCA Feb. 12, 2009), is currently pending review before the Florida Supreme Court, we certify decisional conflict with that First District opinion.

Affirmed. Direct conflict certified.

(Respondent's Appendix).

Petitioner now seeks discretionary review in this Court alleging that the Third District's opinion in Valdes-Pino, 2009 WL 4928030 (Fla. 3d DCA Dec. 23, 2009) is in express and direct conflict with Montgomery v. State, 2009 WL 350624 (Fla. 1st DCA Feb. 12, 2009), which is pending review before this Court (Case No. SC09-332).

SUMMARY OF ARGUMENT

Respondent concedes that there is express and direct conflict between the Third District's decision in Valdes-Pino v. State, and the First District's decision in Montgomery v. State, 2009 WL 350624 review granted in State v. Montgomery, 11 So.3d 943 (Fla. 2009). Respondent requests that this Court stay review of this case pending disposition of Montgomery.

ARGUMENT

RESPONDENT CONCEDES THAT THE OPINION OF THE THIRD DISTRICT COURT OF APPEAL EXPRESSLY AND DIRECTLY CONFLICTS WITH THE FIRST DISTRICT COURT OF APPEAL'S OPINION IN MONTGOMERY V. STATE.

This Court has discretionary jurisdiction to review this issue under Article V, Section 3(b)(3) and (4) of the Florida Constitution.

Respondent concedes that there is express and direct conflict between the Third District's decision in Valdes-Pino v. State, and the First District's decision in Montgomery v. State, 2009 WL 350624 review granted in State v. Montgomery, 11 So.3d 943 (Fla. 2009). Accordingly, if this Court accepts jurisdiction, Respondent requests that this Court stay review of this case pending disposition of Montgomery. See, Allstate Ins. Co. v. Titusville Total Health Care, 848 So.2d 1166 (Fla. 5th DCA 2003) ("Courts have often held that it is appropriate for one court to stay an action in order to avoid a waste of judicial resources if a similar issue is pending in another action and will be dispositive.").

CONCLUSION

WHEREFORE, the State of Florida concedes that this Court has discretionary review in the instant case but should stay review pending disposition of the Montgomery case.

Respectfully submitted,

BILL McCOLLUM.
Attorney General
Tallahassee, Florida

RICHARD L. POLIN
Bureau Chief
Florida Bar No. 0230987

FORREST L. ANDREWS, JR.
Assistant Attorney General
Florida Bar Number 17782
Office of the Attorney General
Department of Legal Affairs
444 Brickell Avenue, Suite 650
Miami, Florida 33131
(305) 377-5850 (O)
(305) 377-5655 (F)

CERTIFICATE OF SERVICE AND COMPLIANCE

I hereby certify that this brief is typed in compliance with the requirements set forth in Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure, and that a true and correct copy of the foregoing Brief of Respondent on Jurisdiction, was

mailed this 22nd day of January, 2010, to Leslie Scalley, Esq., 4214 Watrous Avenue, Tampa, FL 33629.

FORREST L. ANDREWS, JR.
Assistant Attorney General

CERTIFICATE REGARDING FONT SIZE AND TYPE

The undersigned attorney hereby certifies that the foregoing Brief of Respondent on Jurisdiction has been typed in Times New Roman, 14-point type.

FORREST L. ANDREWS, JR.
Assistant Attorney General

