

IN THE SUPREME COURT OF FLORIDA

CATALINO BURGOS,

PETITIONER,

V.

CASE NO. SC10-78

L.T. NO. 2D08-2895

STATE OF FLORIDA,

RESPONDENT.

_____ /

RESPONDENT'S JURISDICTIONAL BRIEF
ON REVIEW FROM THE SECOND
DISTRICT COURT OF APPEAL
STATE OF FLORIDA

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TABLE OF CONTENTS

TABLE OF CONTENTS..... ii

TABLE OF CITATIONS iii

STATEMENT OF THE CASE AND FACTS 1

SUMMARY OF THE ARGUMENT 1

ARGUMENT 2

WHETHER THE SECOND DISTRICT'S OPINION
IN BURGOS v. STATE, ____ So.3d ____,
2009 WL 4877709 (Fla. 2d DCA; December
18, 2009), AS CERTIFIED, DIRECTLY AND
EXPRESSLY CONFLICTS WITH MONTGOMERY V.
STATE, ____ So.3d ____, 2009 WL 350624
(Fla. 1st DCA; February 12, 2009),
REVIEW GRANTED, 11 So.3d 943 (Fla.
2009)?

CONCLUSION..... 3

CERTIFICATE OF SERVICE..... 4

CERTIFICATE OF FONT COMPLIANCE..... 3

TABLE OF CITATIONS

Burgos v. State,
____ So.3d ____, 2009 WL 4877709
(Fla. 2d DCA; December 18, 2009). 2

Montgomery v. State,
____ So.3d ____, 2009 WL 350624
(Fla. 1st DCA; February 12, 2009),
Review Granted, 11 So.3d 943 (Fla. 2009). 2

OTHER AUTHORITIES

Art. V, §3(b)(3), Fla. Const. 1

Fla. R. App. P. 9.030(a)(2)(A)(iv). 1

Fla. R. App. P. 9.030(a) (2) (A) (vi) 1

Fla. R. App. P. 9.120(d). 1

Fla. R. App. P. 9.210(a)(2) 3

PRELIMINARY STATEMENT

Respondent acknowledges that pursuant to Fla. R. App. P. 9.120(d), no jurisdictional brief is required when a matter has been certified as conflict by a District Court under 9.030(a)(2)(A)(vi). However, as Petitioner has set forth argument as to the certification of the Second District Court of Appeal, Respondent has set forth's its response for the benefit of this Honorable Court.

STATEMENT OF THE CASE AND FACTS

Respondent accepts Petitioner's rendition of the Statement of Case and Facts for the purpose of jurisdictional briefing.

SUMMARY OF THE ARGUMENT

Petitioner argues that pursuant to Art. V, §3(b)(3), Fla. Const., this Court may exercise its discretionary jurisdiction to review the instant issue as considered by the Second District Court of Appeal below as certified conflict; Fla. R. App. P. 9.030(a)(2)(A)(vi) and as being in direct and express conflict with other District Court opinions; Fla. R. App. P. 9.030(a)(2)(A)(iv).

ARGUMENT

WHETHER THE SECOND DISTRICT'S OPINION IN BURGOS v. STATE, ____ So.3d ____, 2009 WL 4877709 (Fla. 2d DCA; December 18, 2009), AS CERTIFIED, DIRECTLY AND EXPRESSLY CONFLICTS WITH MONTGOMERY V. STATE, ____ So.3d ____, 2009 WL 350624 (Fla. 1st DCA; February 12, 2009), REVIEW GRANTED, 11 So.3d 943 (Fla. 2009)?

Pursuant to Florida Rule of Appellate Procedure 9.030(a)(2)(A)(iv), this Court is permitted to exercise its discretionary review of decisions of district courts of appeals that expressly and directly conflict with a decision of this Court or another district on the same question of law. As the Second District Court of Appeal has certified conflict with Montgomery v. State, ____ So.3d ____, 2009 WL 350624 (Fla. 1st DCA; February 12, 2009), Review Granted, 11 So.3d 943 (Fla. 2009), and as the facts of this case are not significantly distinguishable from those presented for consideration in Montgomery, the same appears to present, for the purposes of jurisdiction, the requisite conflict to permit review by this Honorable Court. See also: Fla. R. App. P. 9.030(a)(2)(A)(iii).

Given the foregoing, Respondent respectfully acknowledges this Honorable Court has discretionary jurisdiction to hear this matter with the certification of conflict by the Second District Court of Appeal.

CONCLUSION

Respondent respectfully advises it appears this Honorable Court has discretionary authority, given the circumstances of the case and application of the existing law, to exercise its jurisdiction in this case.

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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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by U.S. mail to Timothy J. Ferreri, Assistant Public Defender, Office of the Public Defender, P.O. Box 9000 - - Drawer PD, Bartow, Florida 33831, on this 1st day of February 2010.

DIANA K. BOCK
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