IN THE SUPREME COURT OF FLORIDA

CRAIG B. DANIELS,
Petitioner,

v. **CASE NO. SC11-_____**

STATE OF FLORIDA,
Respondent.
_____/

On Discretionary Review from the First District Court of Appeal: NON-Certified Conflict

---

JURISDICTIONAL BRIEF OF RESPONDENT

PAMELA JO BONDI
ATTORNEY GENERAL

TRISHA MEGGS PATE
Bureau Chief, Tallahassee
Criminal Appeals
Florida Bar No. 045489

CHARLES R. MCCOY
Senior Assistant Attorney General
Florida Bar No. 333646

Office of the Attorney General
The Capitol, Suite PL-01
Tallahassee, Florida 32399-1050
(850) 414-3300
(850) 922-6674 (fax)

Counsel for Respondent

TABLE OF CONTENTS

TABLE OF CITATIONS

STATEMENT OF THE CASE AND FACTS

Case--Daniels seeks review of the First District's decision, which upheld denial of his third and fourth amended rule 3.850 motions; and denial of his motion to voluntarily dismiss the third 3.850 motion without prejudice. The decision below did not certify conflict, and was issued June 28, 2011.

By operation of the mailbox rule, Daniels filed a motion for rehearing July 6. That motion was denied August 4; the mandate issued August 22. By that time, Daniels had already filed a "notice of appeal;" which, tacitly, has been treated as a notice to invoke this court's jurisdiction.

Facts from Decision Below--The decision below began by noting Daniels appealed from denial of his third and fourth rule 3.850 motions, and from denial of his motion to voluntarily dismiss the third motion. (opinion, p.1). Thus, Daniels had been given two opportunities to amend his original motion, in February and June 2008, respectively; to correct facial deficiencies. The motion for voluntary dismissal addressed the third amended motion while contemplating a fourth. (opinion, p.4-5).

SUMMARY OF ARGUMENT

The decision below correctly recognized Spera changed the law on postconviction court response to facially insufficient motions. By conforming to Spera and correctly applying it, the decision below did not conflict with any pre-Spera decisions. Also, any conflict between the decision below and other First DCA decisions does not

establish a basis for review by this court. Lacking jurisdiction, this court should decline review.

Alternatively, if Spencer has demonstrated "misapplication" of Spera, review should still be declined. He had been given two opportunities to amend his original 3.850 motion; filed a third; and at least contemplated a fourth amended motion. The postconviction court properly found his actions to be an abuse of process. It does no violence to the law for Spencer's entire action to be dismissed with prejudice. The postconviction court, and decision below, reached the right result, so further review is not justified.

ARGUMENT

DOES THIS COURT HAVE, OR SHOULD IT EXERCISE, JURISDICTION TO REVIEW THE DECISION BELOW? (Restated).

A. Standard of Review

To find jurisdiction, this court must determine whether the decision below conflicts with decision of another district court or this court--a question of law answered *de novo. Cf.* Jacobsen v. Ross Stores, 882 So.2d 431, 432 (Fla. 1st DCA 2004) (questions of subject matter jurisdiction are reviewed de novo).

B. No Jurisdiction

Spencer cannot reasonably maintain the decision below created jurisdictional conflict. To the contrary, his first point relies not on conflict, but on "misapplication" jurisdiction supposedly announced in Engle v. Liggett Group, Inc., 945 So.2d 1246 (Fla.2006),

cert. den., 552 U.S. 941 (2007).

Engle, in its prefatory summary of holdings only, declared:

> We have jurisdiction because *Engle II* misapplies our decision in Young v. Miami Beach Improvement Co., 46 So.2d 26 (Fla.1950). See art. V, §3(b)(3), Fla. Const. [e.s.].
> * * *
> Further, a majority of the Court ... concludes that Engle II misapplied our decision on the law of the case doctrine in Florida Department of Transportation v. Juliano, 801 So.2d 101, 106 (Fla.2001)[.]
> * * *
> A majority of the Court ... also concludes that the Third District misapplied Ault v. Lohr, 538 So.2d 454, 456 (Fla.1989)[.]

945 So.2d at 1254.

Notably, the only constitutional authority cited for so-called "misapplication jurisdiction" was Art.V,§3(b)(3), which provides in pertinent part:

> (b) **Jurisdiction**.--The supreme court:
> * * *
> (3) May review any decision of a district court of appeal that ... expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law.

Nowhere in this language does the state constitution speak in terms of "misapplies" or "misapplication." Also, when the three instances of misapplication (Young, Juliano, Ault) are studied, it is readily apparent that the so-called "misapplication" was "conflict" by any other name.

The Young court held citizens of Miami Beach were bond by a judgment enjoining the city from asserting an interest in certain real property. The holding was based on the premise that a “judgment against a municipal corporation in a matter of *general interest to*

all its citizens is binding on the latter, although they are not parties to the suit." Engle at 1260, *quoting* Young at at 30 (emphasis supplied [by Young]).

Young found the judgment binding because the city was acting in a *parens patriae* capacity. The district court's decision in Engle, however, extended Young to bar class punitive damage claims based on a settlement agreement which addressed punitive damages between the State itself and tobacco companies only. *See* Engle at 1260-2 (contrasting Young and the district court's decision in Engle). In short, the district court in Engle reached the same result as Young, but on materially different facts--a classic definition of "conflict."

See id. at 1260-2 (explaining the misapplication of

Engle bears no similarity to this case. There, review addressed, among other things, certification of a huge class of plaintiffs suing over injury from cigarette smoking. ; in a case involving a civil suit over

It began by noting he supported his argument with caselaw preceding Spera v. State, 971 so.2d 754 (Fla.2007). (opinion, p.2). It then moved to its central premise, that Spera changed the "process for evaluating postconviction motions." (*Id*.). After that decision, the opinion reasoned, the postconviction court was required to give one opportunity to amend a facially insufficient motion, but not

"unlimited" opportunities to do so. (*Id.*, p.2-3). It then cited two of its own post-Spera decisions (Prevost and Nelson), and the Fourth DCA's decision in Oquendo v. State, 2 So.3d 1001 (Fla.4th DCA 2008). (opinion, p.3).

The decision below correctly recognized Spera changed the law on postconviction court response to facially insufficient motions. By conforming to Spera and correctly applying it, the decision below did not conflict with any pre-Spera decisions. Also, any conflict between the decision below and other First DCA decisions does not establish a basis for review by this court. Lacking jurisdiction, this court should decline review.

C. Jurisdiction Should Not Be Exercised

Alternatively, if Spencer has demonstrated conflict or misapplication of Spera, review should still be declined. He had been given two opportunities to amend his original 3.850 motion; filed a third, and at least contemplated a fourth amended motion. The court properly found his actions to be an abuse of process. It does no violence to the law for Spencer's 3.850 action to be dismissed with prejudice. At the least, the postconviction court reached the right result, so further review is not justified.

CONCLUSION

This court lacks jurisdiction to review the decision below, so Daniel's petition must be denied. Alternatively, this court should decline to exercise its jurisdiction.

Respectfully submitted,

PAMELA JO BONDI
ATTORNEY GENERAL

_____
TRISHA MEGGS PATE
Tall. Bureau Chief, Criminal Appeals
Florida Bar No. 045489

_____
CHARLIE MCCOY
Senior Assistant Attorney General
Florida Bar No. 333646

Office of the Attorney General
The Capitol, Suite PL-01
Tallahassee, Florida 32399-1050
(850) 414-3300 (AGO L11-1-2157)

CERTIFICATE OF SERVICE AND COMPLIANCE WITH RULE 9.210

I certify a copy of this JURISDICTIONAL BRIEF has been sent by U.S. mail to **CRAIG B. DANIELS,** *pro se*, DOC# 091436, Lake Correctional Institution, 19225 U.S. Highway 27, Clermont, Florida 34715-9025; on August ___, 2011. I also certify this brief complies with Fla.R.App.P. 9.210.

_____

CHARLIE MCCOY
Senior Assistant Attorney General

APPENDIX

(DECISION UNDER REVIEW)