IN THE SUPREME COURT OF THE STATE OF FLORIDA

CANDIE ANDERSON,

Petitioner,

v. S. Ct. Case No. 11-3

STATE OF FLORIDA,

Respondent.
_____/

ON DISCRETIONARY REVIEW FROM
THE DISTRICT COURT OF APPEAL, FIFTH DISTRICT

PETITIONER'S BRIEF ON JURISDICTION

JAMES S. PURDY
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

MICHAEL S. BECKER
ASSISTANT PUBLIC DEFENDER
FLORIDA BAR NO. 0267082
444 SEABREEZE BLVD. # 210
DAYTONA BEACH, FLORIDA 32118
(386) 254-3758

COUNSEL FOR PETITIONER

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STATEMENT OF THE CASE AND FACTS

The trial court found that Petitioner violated her community control by committing the new law violation of driving with a suspended driver's license. Petitioner appealed the conviction contending that the state had failed to prove that she knew her license had been suspended which was an essential element of the offense since the suspension had been for failing to pay restitution. The Fifth District affirmed the revocation holding that the evidence was sufficient to support a finding that Petitioner knowingly drove while her license was suspended because the driving record indicated that notice of the suspension had been properly sent by mail to Petitioner's address. In so doing, the court acknowledged conflict with ***Brown v. State***, 764 So. 2d 741 (Fla. 4th DCA 2000) and ***Haygood v. State***, 17 So. 3d 894 (Fla. 1st DCA 2009), which held that where a person is charged with driving on a suspended license, and the suspension was for financial responsibility or a failure to pay a traffic fine, the state must prove that the accused actually received notice of the suspension. Petitioner timely filed her Notice to Invoke the Jurisdiction of this Court on December 29, 2010.

Attached as an Appendix hereto, is a conformed copy of the decision of the Fifth District in ***Anderson v. State***, 35 Fla.L.Weekly D2668 (Fla. 5th DCA December 3, 2010)

SUMMARY OF THE ARGUMENT

The decision of the 5th District Court of Appeal below is in direct conflict with decision of the 4th and 1st District Courts of Appeal regarding the element of knowledge of a suspended license to prove the offense of driving on a suspended license. Where such suspension is for a failure to pay traffic fine or a violation of financial responsibility, mere proof of mailing is insufficient to prove the knowledge requirement.

ARGUMENT

THIS COURT SHOULD EXERCISE ITS DISCRETION TO ACCEPT JURISDICTION IN THIS MATTER TO RESOLVE THE CONFLICT BETWEEN DISTRICT COURTS OF APPEAL.

Article V, Section 3(b)(4) of the Florida Constitution provides that the Florida Supreme Court may review a district court of appeal's decision that is certified by the issuing court to be "in direct conflict with a decision of another district court of appeal." In ***Reaves v. State***, 485 So. 2d 829 (Fla. 1986), this Court explained:

> Conflict between decisions must be express and direct, i.e., it must appear within the four corners of a majority decision. Neither a dissenting opinion nor the record itself can be used to establish jurisdiction.

The issue involved in the instant case is whether the state proved that Petitioner committed the offense of driving while license suspended. There is no dispute that Petitioner's license was suspended for the failure to pay financial obligations, i.e. restitution. The only proof that Petitioner had a suspended license was the driving record which was entered into evidence which showed only that notification was mailed to Petitioner. The court below found that that evidence was sufficient to prove that Petitioner committed the offense, and thus violated her

probation. However, in ***Brown v. State***, 764 So. 2d 741 (Fla. 4th DCA 2000) the defendant was convicted of driving with a suspended license where the suspension was for failure to pay traffic fines. On appeal, the state argued that all that was required to prove the offense was that the department had mailed notice of the suspension. The 4th District Court of Appeal rejected this argument noting that the offense requires that driving with a suspended license must be done knowingly. Further, where the suspension was for failure to pay a traffic fine or for a financial responsibility violation, a mere entry into the department's records and a notice of suspension was sent will not satisfy the knowledge requirement. Instead the statute requires that the person must actually receive the notice. The 1st District Court of Appeal agreed with the rationale of ***Brown***, in ***Haygood v. State***, 17 So. 3d 894 (Fla. 1st DCA 2009). While the court in the instant case ruled that the statutory presumption of knowledge which arises when there is a notation that notice has been mailed was not applicable in Petitioner's case, it nevertheless affirmed the trial court's decision solely on that presumption. Indeed, the trial court in ruling that appellant committed the offense of driving on a suspended license relied on a previous decision of the Fifth District in ***Fields v. State***, 731 So. 2d 753 (Fla. 5th DCA 1999) which held that proper mailing under the statute is conclusion evidence of notice of suspension. However, that decision was clearly superseded

by a subsequent statutory amendment.

The decision in the instant case cannot be reconciled with the decisions of the 4th and 1st District Courts of Appeal. This Court has the discretion to accept the instant case for review to resolve the conflict.

CONCLUSION

Based on the foregoing reasons and authorities cited herein, the Petitioner respectfully requests that this Honorable Court to exercise its discretion and accept the instant case for review.

Respectfully submitted,

JAMES S. PURDY
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

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MICHAEL S. BECKER
ASSISTANT PUBLIC DEFENDER
Florida Bar No. 0267082
444 SEABREEZE BLVD., STE. 210
Daytona Beach, Florida 32118
(386) 254-3758

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been hand delivered to: Office of the Attorney General and mailed to Candie Anderson, DOC #U35626, Lowell Correctional Institution, 11120 N. W. Gainesville Rd., Ocala, FL 34482-1479, on this 10th day of January, 2011.

_____
MICHAEL S. BECKER
ASSISTANT PUBLIC DEFENDER

CERTIFICATE OF FONT

I hereby certify that the size and style of type used in this brief is 14 point Times New Roman font.

_____
MICHAEL S. BECKER
ASSISTANT PUBLIC DEFENDER