

IN THE SUPREME COURT OF FLORIDA

REGINALD BRYANT,

PETITIONER,

v.

STATE OF FLORIDA,

RESPONDENT,

Case No. SC12-1507

FILED  
THOMAS D. HALL  
2012 AUG 17 AM 10:23  
CLERK SUPREME COURT  
BY

ON PETITION FOR REVIEW FROM  
THE SECOND DISTRICT COURT OF APPEAL  
STATE OF FLORIDA

**JURISDICTIONAL BRIEF OF RESPONDENT**

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TABLE OF CONTENTS

	<u>PAGE NO.</u>
TABLE OF CITATIONS .....	ii
STATEMENT OF THE CASE AND FACTS .....	1
SUMMARY OF THE ARGUMENT .....	2
ARGUMENT .....	3
ISSUE I .....	3
WHETHER THE DISTRICT COURT EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISIONS OF THE FLORIDA SUPREME COURT ON THE SAME POINT OF LAW? (RESTATED) .....	3
CONCLUSION .....	5
CERTIFICATE OF SERVICE .....	6
CERTIFICATE OF FONT COMPLIANCE .....	6

TABLE OF CITATIONS

PAGE NO.

Cases

Bryant v. State, 2012 WL 2401787, \_\_\_\_ So.3d \_\_\_\_ (Fla. 2d DCA June 27, 2012) ..... 2,3,4,5

Goldberg v. State, 76 So.2d 1072 (Fla. 5<sup>th</sup> DCA 2011) ..... 2,3,4,5

Other Authorities

§775.082(10), Fla. Stat. .... 3

Fla. R. App. P. 9.210(a)(2) ..... 6

Florida Rule of Criminal Procedure 3.880(b) ..... 3

STATEMENT OF THE CASE AND FACTS

The opinion of the Second District Court of Appeal, a copy of which is appended to Petitioner's Brief on Jurisdiction, outlines the relevant facts at this stage of the proceedings.

**SUMMARY OF THE ARGUMENT**

There is no express and direct conflict between the decision of the Second District Court of Appeals in Bryant v. State, 2012 WL 2401787, \_\_\_\_ So.3d \_\_\_\_ (Fla. 2d DCA June 27, 2012) and that of the Fifth District Court of Appeals in Goldberg v. State, 76 So.2d 1072 (Fla. 5<sup>th</sup> DCA 2011); therefore, this court should dismiss the instant appeal.

## ARGUMENT

### ISSUE I

WHETHER THE DISTRICT COURT EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISIONS OF THE FLORIDA SUPREME COURT ON THE SAME POINT OF LAW? (RESTATED)

There is no express and direct conflict between the decision of the Second District Court of Appeals in Bryant v. State, supra., and that of the Fifth District Court of Appeals in Goldberg v. State, supra.

Both the Second District and the Fifth District agree that the trial court can correct a sentencing error of failing to provide written reasons for departure as required by §775.082(10), Fla. Stat. by providing such written reasons in response to a motion to correct sentencing error filed pursuant to Florida Rule of Criminal Procedure 3.880(b). The conflict resides in the procedure to be followed when the trial court erroneously errors in denying the motion when oral reason is given that is valid but no written finding is promulgated [instant case] and when the court grants the motion orally but fails to give and oral or written reason. The cases are factually distinguishable. Since the conflict is based upon separate and distinct factual circumstances, there is no express and direct conflict.

In Bryant, supra., the Second District stated in its opin-

ion:

We agree with the State that the "Danger to the public" contemplated by section 775.082(a), may be a pecuniary one. See McCloud, 55 So.3d 643, 6344 (Fla. 5<sup>th</sup> DCA 2011) ("While McCloud may not be a physically violent offender, he is apparently willing to steal anything and everything. We believe that 'danger may, at least in some cases, encompass pecuniary or economic harm.'" (quoting United States v. Reynolds, 956 F.2d 192, 192-193 (9<sup>th</sup> Cir. 1992)). We also agree that the instant record indicates that such was the basis for the trial court's imposition of a prison sanction here. However, the plain language of the statute requires the trial court make "written findings that a non-state prison sanction could present a danger to the p[ublic]" before it "may sentence the offender to a state correctional facility." §775.082(1) (emphasis added). And the trial court failed to do so.

As such, we reverse Bryant's sentence and remand for resentencing, at which the trial court may again impose a prison sentence e if it makes the proper written findings. See generally State v. Collins, 985 So.2e 985, 989 (Fla. 2008)

Bryant, *supra.*, at pp.2 (Bold emphasis added)

In Goldberg, *supra.* at 1074, the appellate court stated, "...the trial court made no oral pronouncement as to whether a nonstate prison sanction could present a danger to the public and the written reasons failed to address this issue."

Because the cases are factually distinguishable, this court should determine that there is no express and direct conflict and dismiss the instant appeal.



### CONCLUSION

Based upon the foregoing authorities and arguments, the respondent requests that this court grant the instant appeal based upon the express and direct conflict between the Second District Court of Appeals in Bryant, *supra.*, the and that of the Fifth District Court of Appeal in Goldberg, *supra.*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Assistant Public Defender Megan Olson, Office of the Public Defender, Polk County Courthouse, P.O. Box 9000-Drawer PD, Bartow, Florida 33831, on this 15th day of August, 2012.

**CERTIFICATE OF FONT COMPLIANCE**

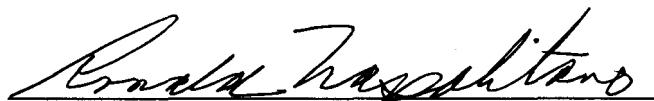
I HEREBY CERTIFY that the size and style of type used in this brief is 12-point Courier New, in compliance with Fla. R. App. P. 9.210(a)(2).

Respectfully submitted,

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