

IN THE SUPREME COURT OF FLORIDA

PROVIDED TO  
CROSS CITY C.I. ON  
JAN 05 2012  
MR FOR MAILING

MICHAEL CAMPBELL,  
*Petitioner,*

V.

Case No. SC12-28  
Lower DCA Case No. 2D11-805

STATE OF FLORIDA,  
*Respondent.*

\_\_\_\_\_ /

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PETITIONER'S JURISDICTIONAL BRIEF

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On Review from the District Court of Appeal  
Second District, State of Florida  
\_\_\_\_\_

Michael Campbell, # S07231  
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Cross City, Florida 32628  
Petitioner, *pro se.*

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## STATEMENT OF THE CASE AND FACTS

Petitioner filed a motion to withdraw plea in the Twelfth Judicial Circuit Court for Sarasota County, Florida, on January 24, 2011. Within the motion, which was filed pursuant to Rule 3.172 (a), Fla. R.Crim.P., he filed one claim for relief, it was and is his position that he should have a substantive right to unilaterally withdraw from a negotiated plea agreement when the trial court had failed to formally accept his plea in open court.

The trial court denied the motion holding: “contrary to the defendant’s implications, Rule 3.172 applies “only before sentencing” ”.

An appeal was timely filed in the second District Court of Appeal on February 10, 2011, to review the trial courts order denying the Petitioner’s motion to withdraw plea, and on October 28, 2011, the District Court affirmed the trial court’s order, and certified conflict with the First District Court of Appeal.

A timely rehearing was filed on November 9, 2011, and was denied on December 9, 2011.

Petitioner’s pro se notice to invoke the discretionary jurisdiction of this court was timely filed in the district court on January 3, 2012.

## SUMMARY OF THE ARGUMENT

The Second DCA certified its decision below to be in conflict with the First DCA's decision in *Cox v. State*, 35 So.3d 47 (Fla. 1<sup>st</sup> DCA), *review denied*, 37 So.3d 489 (Fla. 2010).

Plea agreements are contracts “in which special due process concerns for fairness and adequacy of procedural safeguards obtain” *United States v. Ready*, 82 F. 3d 551, 558 (2d Cir 1996)). *Cox* applied the rules of contract law to *Fla.R.Crim.P.* 3.172 (g) and “allow[ed] Appellant the opportunity to withdraw from his plea contract (after being sentenced) . . . because . . . the trial court inadvertently neglected to state that it had ‘accepted the plea’”. In this case, since there is no indication that plea was “formally accepted” before convicting and sentencing Petitioner, Petitioner’s subsequent conviction and sentence could only have been predicated on an unaccepted, non-existent, unenforceable plea contract.

Petitioner requests this Court accept certified jurisdiction to resolve conflict between Cox and Campbell concerning whether principles of contract law apply to rule 3.172 (g) and, if so, whether a trial court’s failure to “formally accept” a defendant’s plea as expressed/required by Rule 3.172 (g) and as clarified in *Harden v. State*, 453 So.2d 550 (Fla. 4<sup>th</sup> DCA 1984) results in an unaccepted, non-binding, non-existent, unenforceable plea contract.

## JURISDICTIONAL STATEMENT

The Florida Supreme Court has discretionary jurisdiction to review a decision of a district court of appeal that expressly and directly conflicts with a decision of the Florida Supreme Court or another district court of appeal on the same point of law, or where the court of appeal has applied a recognized rule of law to reach a conflicting conclusion in a case involving substantially the same controlling facts as were involved in another district court of appeal. Art. V, §3(b)(3) Fla.Const. (1980); Fla.R.App.P.9.030 (a)(2)(A)(iv).

## ARGUMENT

THE DECISION OF THE FIFTH DISTRICT COURT OF APPEAL IN THIS CASE IS IN DIRECT AND EXPRESSED CONFLICTS WITH THE DECISION OF THE FIRST DISTRICT COURT OF APPEAL *IN COX V. STATE*, 35 So 3d 47 (FLA. 1<sup>st</sup> DCA), REVIEW DENIED, 37 So.3d 489 (FLA. 2010).

In this case the Second DCA's reliance on *Demartine v. State*, 647 So.2d 900 (Fla. 4<sup>th</sup> DCA 1994) and *Harrell v. State*, 894 So.2d 935 (Fla. 2005) is clearly displaced. Both of these cases have not considered or even discussed the applicability of rules of contract law to plea agreements as raised in Petitioner's pleadings that relied on Cox.

State courts are required to construe and interpret plea agreements in accordance with contract law and "in light of the rights and obligations created by the Constitution. *Ricketts v. Adamson*, 483 U.S. 1, 6, 16 (1987). In Florida, it is a well established law that "[a] plea agreement is a contract and the rules of contract law are applicable to plea agreements." *Garcia v. State*, 722 So.2d 905, 907 (Fla. 3d DCA 1998), *review dismissed*, 727 So.2d 905 (Fla. 1999). All five Florida DCAs have followed *Garcia*.

In the present case, no specific performance of accepting Petitioner's plea in the manner as expressed/required by Rule 3.172 (g) has ever occurred. Effectively, Rule 3.172 (g) was breached, procedural due process was denied and principles of contract law were violated resulting in an unaccepted, non-binding, unenforceable,

or nonexistent plea that predicated Petitioner's conviction and sentence – an obvious error. As there was no accepted, binding, enforceable, or existing plea contract *prior to* Petitioner's subsequent conviction and sentence, such conviction and sentence would only be invalid or illegal. Invalid/illegal conviction and sentence are “well within the concept of exceptional circumstances and manifest injustice . . . .” *State v. Sigler*, 967 So.2d 835, 849 (Fla. 2007); see *Benjiman v. State*, 20 So.3d 945, 947 (Fla. 3d DCA 2009)

CONCLUSION

This Court has discretionary discretion based upon certified conflict and the Court should exercise that jurisdiction to consider the merits of Petitioners arguments.

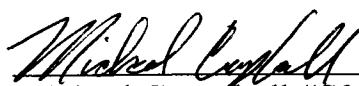


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this brief has been placed in the hands of institutional authorities for mailing via United States Mail, first-class postage prepaid, Office of Attorney General, Second District, Concourse Center 4, 3507 East Frontage Road, Ste. 200, Tampa, Florida 33607, this 5 day of January, 2012.

  
\_\_\_\_\_  
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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this computer-generated brief is submitted in Times New Roman 14-point font and complies with the requirements of rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

  
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Petitioner, Pro se