IN THE SUPREME COURT OF FLORIDA

WARREN STAPLES,	)	
	)	
Petitioner,	)	
	)	
vs.	)	SC14-2485
	)	
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

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PRELIMINARY STATEMENT

Petitioner was the Defendant and Respondent was the prosecution in the circuit court of the ninth judicial circuit, in and for Osceola County, Florida. Petitioner was the Appellant and Respondent was the Appellee in the Fifth District Court of Appeal. In this brief, the parties shall be referred to as they appear before this Honorable Court except that Petitioner may also be referred to as the State. The attached appendix is the opinion of the Fifth District Court of Appeal reported as Staples v. State, --- So.3d ----, 2014 WL 5853778, 39 Fla. L. Weekly D2223, 39 Fla. L. Weekly D2279 (October 24, 2014).

STATEMENT OF THE CASE AND FACTS

The only relevant facts to a determination of this Court's discretionary jurisdiction under Article V, Section 3(b)(3) of the Florida Constitution are those set forth in the appellate opinion sought to be reviewed. A copy of the opinion is contained in the appendix to this brief.

SUMMARY OF ARGUMENT

This Court should accept jurisdiction to review the instant case because Florida's district courts of appeal are in complete disarray on a critical issue with conflicts among districts as well as within districts.

ARGUMENT

THE DECISION OF THE FIFTH DISTRICT COURT OF APPEAL EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION IN BENNETT V. STATE, 684 SO.2D 242 (FLA. 2D DCA 1996).

It is well settled that, in order to establish conflict jurisdiction, the decision sought to be reviewed must expressly and directly create conflict with a decision of another district court of appeal or a decision of this Honorable Court on the same question of law. Art. V, Sect. 3(b)(3) Fla. Const.; Jenkins v. State, 385 So.2d 1356 (Fla. 1980).

The issue in this case is whether Petitioner's probation was properly revoked where, as required by a legislatively mandated condition, he participated in a sex offender treatment program. Section 948.30(1)(c), Florida Statutes (2012). The condition further required that he successfully complete that program. Although Petitioner pleaded guilty, he did so in his "best interest." All agreed that, prior to the entry of his plea, Petitioner was not told that successful completion of that program required that he admit to engaging in deviant sexual behavior. Although Petitioner continued to participate in the program, ultimately he was terminated based on this refusal. (Appendix A)

The Fifth District Court Of Appeal affirmed the trial court's revocation of

Petitioner's probation. In doing so, the court relied heavily on the decisions in Mills v. State, 840 So.2d 464 (Fla. 4th DCA 2003), and Archer v. State, 604 So.2d 561 (Fla. 1st DCA 1992). However, after citing those two cases, the district court added a footnote thereby acknowledging that their holding conflicted with Bennett v. State, 684 So. 2d 242 (Fla. 2d DCA 1996). Specifically, in footnote five the court wrote:

> But see Bennett v. State, 684 So.2d 242 (Fla. 2d DCA 1996) (finding that defendant's refusal, during sex offender treatment program, to admit to charged sexual conduct with child, resulting in his termination from treatment program which he was required to successfully complete as condition of probation, did not constitute willful and substantial violation of terms of probation so as to trigger revocation of probation, under circumstances indicating that defendant had not been advised prior to entry of guilty plea that he would have to admit underlying sexual acts in order to complete probation).

In addition to the conflict with Bennett, closer examination of the case law reveals that a number of Florida district courts are inconsistent, as well as conflicting on this very same issue. In Bell v. State, 643 So. 2d 674, 675 (Fla. 1st DCA 1994), the court held:

> Upon careful review of the unique record in this case, we find that Bell did not violate his probation, much less willfully and substantially so, and the trial court abused its discretion in finding otherwise. Bell's probation order merely required that he "submit to" psychosexual counseling-a requirement which he satisfied by

> attending eight weekly counseling sessions before being terminated therefrom by his counselor for refusing to admit to the underlying charges. The probation order did not require that he admit to the underlying charges or that he complete the counseling at issue. These additional requirements imposed respectively by Bell's counselor and probation officer amounted to an unauthorized and impermissible upward modification of Bell's probation conditions, and Bell cannot now be penalized for failing to abide by them. As such, we reverse Bell's probation revocation and remand to the trial court with directions that Bell's probation be reinstated.

See also Diaz v. State, 629 So.2d 261 (Fla. 4th DCA 1993) (court likewise reversing probation revocation and remanding with directions to reinstate probation under strikingly similar circumstances).

Like the Fifth District in the instant case and the First District in Archer and the Fourth District in Mills, the Third District Court of Appeal has also held that a defendant's refusal to admit his guilt for purposes of completing a court-ordered treatment program was a willful violation of probation. See Arias v. State, 751 So.2d 184 (Fla. 3d DCA 2000)(appellant willfully and substantially violated his probation where he was unable to successfully complete court-ordered mentally disordered sex offender program due to his refusal to accept responsibility).

This Court should accept jurisdiction to review the instant case because Florida's district courts of appeal are in complete disarray on a critical issue with conflicts among districts as well as within districts.

CONCLUSION

WHEREFORE, based on the foregoing arguments and the authorities cited herein, Petitioner respectfully requests this that this Court grant discretionary review in the instant case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been emailed to the Office of the Attorney General, 444 Seabreeze Blvd., 5th Floor, Daytona Beach, Florida, 32118, crimappdab@myfloridalegal.com and mailed to Warren Staples, DOC #X79853, Taylor Correctional Institution-Annex, 8629 Hampton Springs Road, Perry, FL 32348, on this 8th day of January, 2015.

DESIGNATION OF EMAIL ADDRESS

The undersigned designates appellate.efile@pd7.org as its primary email address and quarles@pd7.org as its secondary address.

CERTIFICATE OF FONT

I HEREBY certify that the size and style of type used in the brief is 14 point proportionally spaced Times New Roman.

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