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IN THE SUPREME COURT OF FLORIDA

NOEL PLANK,

Petitioner,

v.

CASE NO. SC14-414
L.T. NO. 1D13-4458

STATE OF FLORIDA,

Respondent.
_____/

ON PETITION FOR DISCRETIONARY REVIEW
OF A DECISION OF THE DISTRICT COURT OF APPEAL
FIRST DISTRICT OF FLORIDA

PETITIONER'S BRIEF ON JURISDICTION

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PETITIONER'S BRIEF ON JURISDICTION

I PRELIMINARY STATEMENT

Petitioner, NOEL PLANK, was the defendant in the trial court and the appellant in the District Court of Appeal, First District. He will be referred to in this brief as Petitioner or by his proper name. Respondent, the State of Florida, was the prosecuting authority and appellee in the trial and district courts, respectively, and will be referred to herein as the State.

The opinion of the District Court is reported in Plank v. State, 39 Fla. L. Weekly D227a (Fla. 1st DCA Jan. 29, 2014), and is attached as an appendix to this brief. The appendix will be designated as "A," followed by the appropriate page number in parenthesis.

II STATEMENT OF THE CASE AND FACTS

Mr. Plank was found guilty of direct criminal contempt for arriving to jury selection drunk and was sentenced to 30 days in the county jail. (A 2).

On direct appeal, Mr. Plank argued that the trial court erred in finding him in contempt without giving him an opportunity to seek counsel for the proceedings. (A 2). The First District Court of Appeals affirmed the lower court's proceedings per curiam.

Mr. Plank moved for rehearing or certification on the ground that the court's opinion overlooked established case law that a trial court cannot impose a jail sentence for any criminal proceeding without appointing counsel for the defendant, including in cases of direct criminal contempt. Al-Hakim v. State, 53 So. 3d 1171 (Fla. 2d DCA 2011). On January 29, 2014, the District Court denied petitioner's motion for rehearing but granted his motion for a written opinion. On February 28, 2014, petitioner timely filed a notice to invoke this Court's discretionary jurisdiction. This brief on jurisdiction follows.

III SUMMARY OF ARGUMENT

Due to the brevity of the argument, summary of the argument has been omitted.

IV ARGUMENT

ISSUE PRESENTED:

THE OPINION IN PLANK V. STATE, 39 Fla. L. Weekly D227a (Fla. 1st DCA Jan. 29, 2014), EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISIONS OF THE DISTRICT COURT OF APPEAL IN WOODS V. STATE, 987 So.2d 669 (Fla. 2D DCA 2007) AND AL-HAKIM V. STATE, 53 So.3d 1171 (Fla. 2d DCA 2011), ON THE SAME POINTS OF LAW.

The First District Court of Appeal held that Mr. Plank did not have a right to be given an opportunity to seek counsel for a direct criminal contempt proceeding. (A 2) However, this directly conflicts with the holdings of the Second District in Woods v. State, 987 So. 2d 669 (Fla. 2d DCA 2007) and Al-Hakim v. State, 53 So. 3d 1171 (Fla. 2d DCA 2011), which held that a defendant does a have right to counsel in direct criminal contempt proceedings. (A 3). The Fourth District followed similar reasoning and reach a similar result in Hayes v. State, 592 So. 2d 327 (Fla. 4th DCA 1992); but see Forbes v. State, 933 So. 2d 706, 711 (Fla. 4th DCA 2006). A proceeding for direct criminal contempt, because it is punishable by up to twelve months' imprisonment, is governed by the Florida Rules of Criminal Procedure. Rule 3.111(b) mandates that counsel be provided in "all prosecutions for offenses punishable by incarceration." Fla. R. Crim. P. 3.111(b) This Court should accept jurisdiction of this cause to resolve the conflict between the District Courts of Appeal on this legal issue.

V CONCLUSION

The District Court's decision patently conflicts with Woods v. State, and Al-Hakim v. State, because it affirmed petitioner's judgment and sentence for direct criminal contempt after a hearing at which petitioner was not afforded the opportunity to seek counsel. This Court should accept jurisdiction to review the decision below and affirm the right to counsel for all defendants who are charged with offenses punishable by incarceration.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by electronic mail to Charles Dewrell, Office of the State Attorney, Leon County Courthouse, Tallahassee, FL, and to Trisha Meggs Pate, Assistant Attorney General, Criminal Appeals Division, The Capitol, The PL-01, Tallahassee, FL, 32399-1050, at Crimapptlh@myfloridalegal.com as agreed by the parties, on this 7th day of March, 2014.

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief has been prepared using Courier New 12 point font in compliance with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

Respectfully submitted,

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APPENDIX TO

PETITIONER'S BRIEF ON JURISDICTION

Plank v. State, 39 Fla. L. Weekly D227a
(Fla. 1st DCA Jan. 29, 2014)

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

NOEL PLANK,

Appellant,

CASE NO. 1D13-4458

v.

STATE OF FLORIDA,

Appellee.

_____/

Opinion filed January 29, 2014.

An appeal from the Circuit Court for Leon County.
Angela C. Dempsey, Judge.

Nancy A. Daniels, Public Defender, and Colleen D. Mullen, Assistant Public Defender, Tallahassee, for Appellant.

William N. Meggs, State Attorney, and Charles Dewrell, Assistant State Attorney, Tallahassee, for Appellee.

ON MOTION FOR REHEARING, CLARIFICATION, REQUEST FOR WRITTEN OPINION, AND CERTIFICATION OF CONFLICT

PER CURIAM.

We deny Appellant's motion for rehearing, but grant his motion for a written opinion and substitute this opinion in place of our previously issued per curiam affirmance.

Appellant was found guilty of direct criminal contempt and sentenced to 30 days in jail for arriving drunk to jury duty and disrupting the process of jury selection. He raises three issues in this direct appeal. We affirm two of the issues without further comment, and affirm the remaining issue for the reasons that follow.

Appellant argues that the trial court erred by not appointing him counsel or giving him an opportunity to seek counsel for the contempt proceeding. We affirm on the authority of Williams v. State, 698 So. 2d 1350 (Fla. 1st DCA 1997), and Saunders v. State, 319 So. 2d 118 (Fla. 1st DCA 1975), in which this court held that a defendant does not have a right to counsel under the Sixth Amendment or the Florida Rules of Criminal Procedure when charged with direct criminal contempt. Accord Searcy v. State, 971 So. 2d 1008, 1014 (Fla. 3d DCA 2008); Forbes v. State, 933 So. 2d 706, 711 (Fla. 4th DCA 2006); see also In re Oliver, 333 U.S. 257, 274-75 (1948) (explaining that the right to counsel and other due process requirements are not implicated in contempt cases involving "charges of misconduct, in open court, in the presence of the judge, which disturbs the court's business, where all of the essential elements of the misconduct are under the eye of the court, are actually observed by the court, and where immediate punishment is essential to prevent demoralization of the court's authority before the public") (internal quotations and ellipses omitted); In re Terry, 128 U.S. 289, 313 (1888)

(explaining that a court's jurisdiction to punish direct contempt vests upon commission of the contemptuous act and that it is within the court's discretion to punish the offense immediately or to postpone action until the defendant is afforded an opportunity to present a defense).

We recognize that the Second District held in Woods v. State, 987 So. 2d 669 (Fla. 2d DCA 2007), and Al-Hakim v. State, 53 So. 3d 1171 (Fla. 2d DCA 2011), that a defendant has a right to counsel under the Florida Rules of Criminal Procedure in direct criminal contempt proceedings. The Fourth District reached a similar conclusion in Hayes v. State, 592 So. 2d 327 (Fla. 4th DCA 1992). But see Forbes, supra. Accordingly, we certify conflict with these cases.

AFFIRMED; CONFLICT CERTIFIED.

ROBERTS, WETHERELL, and MARSTILLER, JJ., CONCUR.