

IN THE SUPREME COURT OF FLORIDA

DARRICK MCFADDEN,

Appellant,

v.

CASE NO. SC14-93

STATE OF FLORIDA,

Appellee. _/

ON DISCRETIONARY REVIEW FROM THE
SECOND DISTRICT COURT OF THE APPEAL

JURISDICTIONAL BRIEF OF APPELLEE

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STATEMENT OF THE CASE AND FACTS

Petitioner was sentenced in 2008. He entered into an agreement with the State to provide assistance which ultimately facilitated the prosecution of Petitioner's codefendant. The State then filed a motion pursuant to F.S. 921.186 to reduce Appellant's sentence which was denied by the trial court. Petitioner sought appeal in the Second District. The State argued below that the Second District had no jurisdiction to consider Petitioner's case because the trial court's ruling was purely discretionary, relying upon the First District's decision in Cooper v. State, 106 So.3d 32 (Fla. 1st DCA 2013). The Second District rejected the State's argument and held, instead, that it has the power to review an order denying a §921.186 motion where it is alleged that the lower court considered "improper factors." The Second District certified conflict with the First District.

Petitioner's timely Notice to invoke this Court's discretionary jurisdiction was filed January 13, 2014.

SUMMARY OF THE ARGUMENT

The Second District has certified conflict. This Court has authority to exercise its discretionary jurisdiction to review the decision of the Second District Court of Appeal in McFadden V. State, ___ So.3d ___ (Fla. 2d DCA 2013).

ARGUMENT

WHETHER THE DECISION OF THE SECOND DISTRICT COURT OF APPEAL IN MCFADDEN V. STATE, _____ So.3d _____ (Fla. 2d DCA 2013) IS IN CONFLICT WITH COOPER V. STATE (As restated by Respondent)

As a general rule, conflict jurisdiction exists when a decision of a court of appeal expressly and directly conflicts with a decision from another court of appeal or of the Florida Supreme Court on the same question of law. Art. V, §3(b)(3), Fla. Const.; Fla. R. app. P. 9.030(a)(2)(A)(iv). Conflict between decisions must be express and direct, i.e., it must appear within the four corners of the majority decision. Neither a dissenting opinion nor the record itself can be used to establish conflict jurisdiction. Reaves v. State, 485 So. 2d 829 (Fla. 1986); see also The Florida Bar v. B.J.F., 530 So. 2d 286 (Fla. 1988).

In this case, Petitioner seeks review because the Second District has certified that its decision in his case is in conflict with the First District's decision in Cooper v. State, 106 So.3d 32 (Fla. 1st DCA 2013). In Cooper, the State filed a motion to reduce the defendant's sentence after he successfully completed a substantial assistance agreement pursuant to F.S. §921.186. That section provides:

Notwithstanding any other law, the state attorney may move the sentencing court to reduce or suspend the sentence of any person who is convicted of violating any felony offense and who provides substantial assistance in the identification, arrest, or conviction of any of that person's accomplices, accessories, coconspirators, or

principals or of any other person engaged in criminal activity that would constitute a felony. The arresting agency shall be given an opportunity to be heard in aggravation or mitigation in reference to any such motion. Upon good cause shown, the motion may be filed and heard in camera. The judge hearing the motion may reduce or suspend the sentence if the judge finds that the defendant rendered such substantial assistance.

§ 921.186, FLA. STAT. (2010) (emphasis added). Notably, Section 921.186 does not provide for a right to appeal by either the State or the Defendant. The defendant sought direct review in the First District after the trial court denied the State's motion to reduce his sentence. The First DCA dismissed the appeal, however, because it concluded that the trial court's decision not to grant the State's motion was discretionary and therefore not subject to review. Analogizing §921.186 to motions filed under Rule 3.800(c), the First District concluded that it lacked jurisdiction to review a trial court's discretionary decision not to reduce a sentence. The First District's ruling is consistent with longstanding precedent throughout Florida holding that a trial court's decision not to reduce a defendant's sentence is purely discretionary and may be reviewed through writ of certiorari, but is not otherwise subject to direct review. See, for example, Staveley v. State, 866 So.2d 1239 (Fla. 5th DCA 2004); Graham v. State, 845 So.2d 1016 (Fla. 3rd DCA 2003), (both cases confirming no right to appeal trial court's discretionary decision denying motion to reduce sentence). See also Adams v. State, 800 So.2d 741 (Fla. 5th DCA 2001), (holding that right of

review in such cases is limited to certiorari).

In Petitioner's case, the trial court exercised its discretion not to grant the State's motion to reduce Petitioner's sentence. The Second District has limited (certiorari) authority to review a trial court's order denying a motion to reduce sentence; however, the court in Petitioner's case held that it has jurisdiction to consider such an order on direct review. This was an impermissible expansion of the appellate court's scope of review, is inconsistent with previous precedent and, we agree, is also in conflict with Cooper.

Fla. R. App. P. Rule 9.030(a)(2) specifies that discretionary jurisdiction may be exercised to review:

(A) decisions of district courts of appeal that

(i) expressly declare valid a state statute;

(ii) expressly construe a provision of the state or federal constitution;

(iii) expressly affect a class of constitutional or state officers;

(iv) expressly and directly conflict with a decision of another district court of appeal or of the supreme court on the same question of law;

(v) pass upon a question certified to be of great public importance;

(vi) are certified to be in direct conflict with decisions

of other district courts of appeal.

The Florida Constitution, Art. 5 § 3, provides the Florida Supreme Court:

(3) May review any decision of a district court of appeal that expressly declares valid a state statute, or that expressly construes a provision of the state or federal constitution, or that expressly affects a class of constitutional or state officers, or that expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law.

This Court has authority, pursuant to its discretionary power to resolve conflict between the District Courts, to accept jurisdiction of this case.

CONCLUSION

Respondent respectfully requests that this Honorable Court accept jurisdiction in this case.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Karen M. Kinney, Assistant Public Defender, c/o Office of the Public Defender, P.O. Box 9000 Drawer PD, Bartow, Florida 33831 on this 7th day of February, 2014.

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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APPENDIX