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IN THE SUPREME COURT OF FLORIDA

DARRICK L. MCFADDEN,	:	
Petitioner,	:	
vs.	:	Case No. SC14-93
STATE OF FLORIDA,	:	
Respondent.	:	
	:	

DISCRETIONARY REVIEW OF DECISION OF THE
DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

REPLY BRIEF OF PETITIONER ON THE MERITS

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ISSUE

THIS COURT SHOULD (1) RESOLVE THE CERTIFIED CONFLICT BY HOLDING THAT DISTRICT COURTS HAVE JURISDICTION TO REVIEW A CIRCUIT COURT'S FINAL ORDER ARISING FROM A SECTION 921.186 PROCEEDING, AND (2) QUASH THE OPINION BECAUSE THE DISTRICT COURT FAILED TO APPLY THE DE NOVO STANDARD OF REVIEW TO THE PURE QUESTION OF LAW IMPLICATED BY THE DENIAL OF THE STATE'S MOTION.

(A) Conflict Based on Jurisdictional Authority of District Court

With regard to the district court's jurisdiction, the State's brief contains a glaring omission by failing to address the Florida Constitution's grant of jurisdiction to the district court, which has been interpreted as giving a person the right to appeal a final order of the circuit court.

> "Article V, section 4(b), which grants the district courts' jurisdiction to hear criminal appeals, also grants criminal defendants a constitutional right to an appeal." State v. Jefferson, 758 So. 2d 661, 664 (Fla. 2000); see Amendments to the Florida Rules of Appellate Procedure, 696 So. 2d 1103 (Fla. 1996) (construing "the language of article V, section 4(b) as a constitutional protection of the right to appeal"). However, "the legislature may implement this constitutional right and place reasonable conditions upon it so long as they do not thwart the litigants' legitimate appellate rights." State v. Jefferson, 758 So. 2d 661, 664 (Fla. 2000).

Hall v. State, 823 So. 2d 757, 762 (Fla. 2002). The constitutional provision governing the jurisdiction of the district court does not condition the right to appeal on the type of final order

entered by the trial court or on whether the order was based on a discretionary determination. Because the Florida Constitution confers jurisdiction in the district court, there is no legal basis for this Court to deny McFadden his right to appeal. In other words, this Court should not adopt the holding of the First District in Cooper v. State, 106 So. 3d 32 (Fla. 1st DCA 2013), because that holding contravenes the Florida Constitution.

The Florida Legislature cannot thwart a person's constitutional right to appeal an order entered under section 921.186, Florida Statutes (2010). The legislature could have placed conditions upon the right to appeal from a ruling under this statute, but it has not done so.

The question of whether a district court has jurisdiction to review a circuit court's final order on a motion filed under Florida Rule of Criminal Procedure 3.800(c) is not before this court. However, because the State attempts to draw upon rule 3.800(c) case law to support its argument, Petitioner asserts that modern cases denying a right to appeal final orders entered on rule 3.800(c) motions are incorrectly decided. When dismissing appeals from final orders entered on rule 3.800(c) motions, appellate courts have disregarded the constitutional basis for the district court's jurisdiction. The underlying rationale for such dismissals is opaque and, to the extent ascertainable, outdated. The Second District has recognized this in a case that the State cited extensively in the Answer Brief. In Spaulding v. State, 93 So. 3d 473, 474 n.2 (Fla. 2d DCA 2012), the court commented: "It

is arguable that orders denying motions filed pursuant to rule 3.800(c) are now appealable." To the extent that any rationale is discernable for the dismissal of an appeal from a rule 3.800(c) motion, the rationale erroneously exchanges the concepts of appellate jurisdiction and standard of review. See Cooper v. State, 106 So. 3d 32 (Fla. 1st DCA 2013). This Court must recognize that the two are not interchangeable.

B. Conflict Based on Standard of Review

The State recognizes that the Second District's analysis will not hold water. It asserts: "even if this court agrees with the Second District's need for review, this court should still reject their 'limited direct appeal' solution." (Answer Br. at 7). We agree on that point. There is no legal basis for the Second District to limit the types of claims that are cognizable on appeal.

The issue raised on appeal by Mr. McFadden was a legal issue: the decision whether to follow a statute is not subject to the judge's discretion. But the terminology can sometimes be confusing because it has been said that "[a trial] court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence." Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 405 (1990); see also McDuffie v. State, 970 So. 2d 312, 326 (Fla. 2007)(quoting Cooter & Gell). Therefore, the trial court can be said to have necessarily abused his discretion when it denied the State's motion in this case for improper reasons.

The State is correct that McFadden advocates for a de novo review of the legal issues arising from the case at hand. That is not to say that all possible issues arising from any section 921.186 hearing will be legal issues. Presumably, if a judge were to grant a motion and give a ten year reduction in sentence when the State was asking for twenty, the amount of reduction would be discretionary, assuming it were based on proper, legal reasons. But if a judge were to say that he or she never gives more than a ten year reduction in sentence as a matter of policy, then a legal issue could arise on appeal. See Cromartie v. State, 70 So. 3d 559 (Fla. 2011). Certainly, the standard of review depends on the precise issue raised; not on the authorizing statute or the type of proceeding from which an order is issued.

This court should quash the Second District's opinion because it declares that a decision to reduce or suspend a defendant's sentence falls squarely within the discretion of the trial court, and it cites Cooper for that declaration, which is odd authority to rely upon given that the Cooper court dismissed the appeal for lack of jurisdiction. One must assume that the Second District meant what it said: that the Second District considers all appealable issues arising from section 921.186 hearings as falling squarely within the discretion of the trial court. This is a patently wrong standard of review in juxtaposition with the claim that McFadden put before the court, "that the trial court misapplied the statute." McFadden v. State, 130 So. 3d 697, 698 (Fla. 2d DCA 2013). If the Second District meant something other

than what it said, that is not discernable from its opinion. This Court should clarify that the proper standard of review for the claim that McFadden raised on appeal was de novo.

Even if the State is correct that the only way for McFadden to challenge the trial court's order was by way of a petition for writ of certiorari, the district court's denial of relief was still incorrect. McFadden was entitled to relief under the certiorari standard because the trial court departed from the essential requirements of law when it denied relief for the improper reasons here. See, e.g., Wesner v. State, 843 So. 2d 1039 (Fla. 2d DCA 2003) (granting petition for writ of certiorari where "the basis of the trial court's denial [of motion to modify probation] was its mistaken belief that it did not have the legal authority to consider the motion"); Alexander v. State, 816 So. 2d 778 (Fla. 2d DCA 2002) (granting petition for writ of certiorari and quashing order denying motion to mitigate where defendant's right to due process was violated).

In a direct appeal case addressing a similar a claim of improper consideration of certain factors to support a sentencing decision, the Second District expressly found a fundamental due process violation and reversed for resentencing before a different judge:

> The trial court's improper consideration of the fact that Hannum maintained his innocence in his testimony at trial and at sentencing and refused to take responsibility for his actions was equivalent to a denial of due process. See Bracero [v. State], 10 So.3d [664,] 665-666 [(Fla. 2d DCA 2009)]. Although the court offered additional reasons to justify its sentence in

> ruling on Hannum's rule 3.800(b)(2) motion, the court's order on the motion is a nullity. Regardless, the court's original statements at sentencing were not ambiguous in any manner and expressly addressed these improper factors. Accordingly, the trial court committed fundamental error in imposing sentence. We therefore reverse Hannum's sentence and remand for resentencing before a different judge. See id.

Hannum v. State, 13 So. 3d 132, 136 (Fla. 2d DCA 2009); see also Gage v. State, 2D12-5769, 2014 WL 3537012 (Fla. 2d DCA July 18, 2014) (holding that trial court's reliance on improper sentencing factors was a denial of due process and fundamental error).

It is abundantly clear from the relatively short hearing comprising the record in this case that a fundamental due process violation occurred. The trial judge was hostile to the State Attorney's decision to file the motion, and he indicated disapproval of the statutory policy that would reward McFadden for any substantial assistance that occurred after his sentencing. See, e.g., R22-23, where judge tells Mr. Lee: "But it stirs up everybody . . . . And [it can] cause a lot of problems in that regard." The judge also suggested that future events could negate McFadden's assistance, which put the Assistant State Attorney on the defensive:

> THE COURT: What if McSwain – now he is in a period of time that he can file a motion to withdraw his plea. He can still do that, can't he?
>
> MR. LEE: He still could do that.
>
> THE COURT: If he does that, there was no substantial assistance, there was an attempt at it.
>
> MR. LEE: Well, there certainly was substantial assistance. There's no question

> but for him we could not have acquired and achieved the plea that we got.
>
> THE COURT: But you didn't follow all the affidavits to be sure that there wasn't some other way to get that testimony.

(R23). The judge acted like the prosecutor's supervisor, asking the Assistant State Attorney if he had done everything he could to try to get ahold of witness "Cruz and the rest of them." The prosecutor said "yes, sir," and explained that Cruz was an illegal immigrant who had returned to Nicaragua. (R25). The judge also expressed concern that there were "a lot of prosecutions that could have been had out of this case," but, he said, criticizing the State: "None of them were followed up on." (R27).

The record of the hearing is clear that the trial judge denied the State's motion for improper reasons, including an express statement that he had "no alternative" than to deny the motion. This Court should direct the Second District to remand for a new hearing.

CERTIFICATE OF SERVICE

I certify that a copy has been served electronically via the efiling Portal on Peter Koclanes at the Office of the Attorney General at CrimappTPA@myfloridalegal.com and Peter.Koclanes@myfloridalegal.com, on this 1st day of August, 2014.

CERTIFICATION OF FONT SIZE

I hereby certify that this document was generated by computer using Microsoft Word with Courier New 12-point font in compliance with Fla. R. App. P. 9.210 (a)(2).

Respectfully submitted,

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