IN THE SUPREME COURT OF FLORIDA

ERIC GREEN,

Plaintiff/Petitioner,

vs.

Case No. SC15-1805
LT No. 1D14-4052

CALVIN K. COTTRELL, DANNY E. COOK, DONALD E. DUBLIN and SGT. D. BRYANT,

Defendants/Respondents.
_____/

RESPONDENTS BRYANT, COOK AND COTTRELL'S AMENDED JURISDICTIONAL BRIEF
(Amended to Correct Page 4 Only)

On Discretionary Review from the District Court of Appeal
First District, State of Florida

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TABLE OF CONTENTS

TABLE OF CITATIONS

STATEMENT OF THE CASE AND FACTS

Respondents agree with Petitioner's Statement of the Case and Facts.

SUMMARY OF ARGUMENT

Respondents agree this Court may accept review in this matter because Calhoun v. Nienhuis, 110 So.3d 24 (Fla. 5th DCA 2013) held that the four year statute of limitations in §768.28(14) applied in a conditions of confinement case filed by a pretrial detainee (inmate) at the time she was injured. In contrast, the Petitioner here has been a convicted "prisoner" at all times material. Accordingly, the First District held that the one-year statute of limitations period of §95.11(5)(g) applied to his claims, and it also expressly disagreed with the Fifth District's reasoning in Calhoun.

As they argued below, Respondents say Calhoun can and should be limited to its facts. Therefore, although they do not concede that there are *necessarily* any "territorially distinct applications of Florida law" arising from the two cases, they must concede that such confusion will likely arise, and this case presents an important legal issue affecting large numbers of prospective plaintiffs and defendants who often are actually constitutional officers. It would be significantly helpful to the public and bar if this Court accepts jurisdiction to clarify the express conflict between the First District's opinion in this matter and Calhoun.

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 the decision of the supreme court or another district court of appeal on the same point of law. Art. V, §3(b)(3), Fla. Const. (1998); Fla.R.App.P. 9.030(a)(2)(A)(iv).

ARGUMENT

I. THE FIRST DISTRICT'S DECISION IN THIS CASE EXPRESSLY AND DIRECTLY CONFLICTS WITH A DECISION OF THE FIFTH DISTRICT ON AN IMPORTANT QUESTION OF LAW.

A. The Case Creates an Express and Direct Conflict in the Districts.

In this case, the First District Court held that a one-year statute of limitations in §95.11(5)(g), Florida Statutes, applies to prisoner negligence actions. The court expressly acknowledged its conflict with the Fifth District's decision in Calhoun v. Nienhuis, 110 So.3d 24 (Fla. 5th DCA 2013) - a case in which the Fifth District applied the four-year statute of limitations period set forth in §768.28(14). As the First District explained: "we write to address our reasoning on the statute of limitations issue to express our disagreement with Calhoun v. Nienhuis, 110 So.3d 24 (Fla. 5th DCA 2013) . . ."

B. The Issue Creating Conflict is Important and the Court should Exercise its Discretionary Jurisdiction to Resolve it.

There is ample reason to review this express and direct conflict. In issuing its original decision, the Fifth District correctly cited general principles of law, but neglected to apply the Legislature's far more recent enactment. It essentially eviscerated and made a nullity of §95.11(5)(g), Fla. Stat. Courts are obligated to construe statutes as written by the Legislature, and they should not disregard clear legislative intent. State v. Jett, 626 So. 2d 691, 693 (Fla. 1993) ("Courts may not twist

the plain wording of statutes in order to achieve particular results. Even when courts believe the legislature intended a result different from that compelled by the unambiguous wording of a statute, they must enforce the law according to its terms."); see also, Fla. Dep't of Environmental Protection v. Contractpoint Florida Parks, LLC, 986 So.2d 1260, 1265 (Fla. 2008) ("A statute must be given its plain and obvious meaning."); Alexdex Corp. v. Nachon Enterprises, Inc., 641 So.2d 858, 862 (Fla. 1994) ("A contrary holding would ignore the latest legislative expression on the subject and run counter to our principle enunciated in Sullivan, that a statute should not be interpreted in a manner that would deem legislative action useless.").

Here, the First District correctly interpreted the Legislature's much later expressed intent and applied §95.11(5)(g) to a "prisoner" in this matter. The First District's legal analysis is entirely consistent with this Court's binding precedent, and the Fifth District's Calhoun decision effective nullifies the Legislature's much later expressed statutory intent because if the one-year statute of limitations does not apply here, it does not apply anywhere.

Policy is also critically important here.[1] Whether to apply a one-year statute

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[1]Although it cannot be argued under the specific facts of this case as a clear constitutional grounds for discretionary review, a significant number of Florida county jails are operated by the county's sheriffs. Under Florida's limited waiver of sovereign immunity, such sheriffs are often a named defendant in these types of condition(s) of confinement cases. § 768.28(9)(a), Fla. Stat. (2014); see, Nicarry v. Eslinger, 990 So.2d 661 (Fla. 5th DCA 2008); see also, Rogers v. Judd, 389 Fed.Appx. 983 (11th Cir. 2010); see also, Dep't. of Corrections v. Koch, 582 So. 2d

or four-year of limitations period is fundamental to the prosecution of lawsuits. The confusion created by territorially inconsistent applications of the statute of limitations arising from conditions of confinement cases within county jails makes no sense and should be resolved.

This Court should exercise its discretion to accept jurisdiction and resolve the conflict so that future claimants and lower courts are properly and consistently guided as to when they must file suit; and, the Legislature's latest expression of its intent is fully preserved.

5, 7-8 (Fla. 1st DCA 1991)("s. 768.28(9) transferred the employee's liability to the [agency involved]"). As a distinct class of constitutional or state officers under Art. VIII, §1(d), of the state's constitution, they will plainly be affected by the two apparently conflicting opinions. Fla. Const., Art. V, §3(b)(3).

CONCLUSION

This Court should exercise its discretionary jurisdiction to decide this case on the merits.

Respectfully submitted this 30th day of October, 2015.

/s/ Carl R. Peterson, Jr.
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Florida Courts eFiling Portal to Charles M. Auslander, Esq., John G. Crabtree, Esq., George R. Baise, Jr., Esq., Brian C. Tackenberg, Esq., Crabtree & Auslander, 240 Crandon Blvd., Suite 234, Key Biscayne, Florida 33149 this30th day of October, 2015.

/s/ Carl R. Peterson, Jr.
CARL R. PETERSON, JR.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the font requirements of Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

/s/ Carl R. Peterson, Jr.
CARL R. PETERSON, JR.