IN THE SUPREME COURT OF FLORIDA

JONATHAN GODWIN,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

Case No.:SC15-563

On Review From the District Court of Appeal
Second District, State of Florida

PETITIONER'S JURISDICTIONAL BRIEF

Mr. Jonathan Godwin, DC# M07545
Cross City Correctional Institution
568 N.E. 255th Street
Cross City, Florida 32628

Petitioner *pro se*

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STATEMENT OF THE CASE AND FACTS

After a jury trial, Petitioner was found guilty of Robbery with a Firearm and Armed False Imprisonment. He was sentenced to life imprisonment for the armed robbery, with a concurrent 15 years for armed false imprisonment. The Second District Court of Appeal per curiam affirmed the judgment and sentence without an opinion. Godwin v. State, 996 So.2d 221 (Fla. 2nd DCA 2008). Thereafter, Petitioner filed a timely 3.850 postconviction motion for relief. He alleged six grounds (with subgrounds), with four being granted for an evidentiary hearing. One of the grounds that was granted for a hearing was ground five-subground-two.[1] In ground five-subground-two, Petitioner argued that trial counsel was ineffective for failing to object to the trial court's improper consideration of his assertion of innocence and failure to show remorse in imposing sentence.[2] Ultimately the postconviction court denied all grounds.

On appeal, the Second District initially affirmed without opinion. Upon consideration of Petitioner's motion for rehearing, clarification, and/or certification, the district court wrote an opinion. (See Appendix A).

The district court addressed Petitioner's ground five-subground-two, briefly covering the facts, applicable law and affirmed the denial of relief. The Court

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[1] The Second District referred to this ground as "5(b)."

[2] Petitioner also asserted that the trial court relied on materially false and/or unreliable information without objection by trial counsel.

noted that "defense counsel informed the trial court that the State had originally offered Godwin ten years in prison with a ten-year minimum mandatory. Counsel asserted that Godwin should not be penalized for going to trial or proceeding pro se at trial and requested that the court impose the ten-year sentence. Counsel asserted that, after ten years in prison, Godwin would have learned his lesson and can be thereafter a contributing member of society." (Appendix A, pg. 2) The Second District stated that, "the trial court rejected defense counsel's argument that ten years in prison would be a sufficient sentence and expressed its fear that if Godwin were released from prison, society would be at risk." That the trial court "indicated it had no doubt that Godwin committed the crimes, and observed that Godwin had not shown the slightest remorse or acknowledgment of his actions." Ibid. Furthermore, "the violent nature of Godwin's acts," was considered in imposing the statutory maximum life sentence with fifteen years concurrent.

The Second District "recognized that a defendant's assertion of innocence and lack of remorse may not be factors that contribute to a defendant's sentence. See e.g. Gage v. State, 147 So.3d 1020, 1022 (Fla. 2nd DCA 2014); Johnson v. State, 120 So.3d 629, 631 (Fla. 2nd DCA 2013); Brown v. State, 27 So.3d 181, 183 (Fla. 2nd DCA 2010) (Appendix A, pg. 3) However, the district court "agreed with the postconviction court that in context, the trial court's comments at sentencing were made in connection with its rejection of the argument for mitigation." See

Shelton v. State, 59 So.3d 248, 250 (Fla. 4th DCA 2011)" Id. Petitioner timely filed a notice to invoke discretionary jurisdiction.

SUMMARY OF ARGUMENT

In this case the Second District Court of Appeal, held that the trial court's consideration of Petitioner's failure to admit guilt and show remorse in imposing sentence were made for the legitimate purpose of refuting defense counsel's request for mitigation. The decision of the Second District Court cannot be reconciled with the previous decisions in Hubler v. State, 458 So.2d 350 (Fla. 1st DCA 1984); Johnson v. State, 948 So.2d 1014 (Fla. 3rd DCA 2007); Gilchrist v. State, 938 So.2d 654 (Fla. 4th DCA 2006); and K.N.M. v. State, 793 So.2d 1195 (Fla. 5th DCA 2001), wherein the district courts held that where a trial court weighs and/or considered a defendant's failure to admit guilt or show remorse in aggravating a sentence violated a defendant's due process right not to incriminate himself. Furthermore, the decision misapplied the decision in Shelton v. State, 59 So.3d 248 (Fla. 4th DCA 2011), where in the Fourth District held that the trial court did not use lack of remorse against defendant at sentencing and therefore no due process violation occurred. Thus, the Petitioner contends that the decision of the Second District Court expressly and directly conflicts with previous decisions of the First, Third, Fourth, and Fifth District Courts of Appeal on the same question of law.

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 a decision of this Court or another district court of appeal on the same question of law. Art. V, §3(b)(3) Fla. Const.; Fla.R.App.P. 9.030(a)(2)(A)(iv); See also Wallace v. Dean, 3 So.3d 1035, 1040 (Fla. 2009) (identifying misapplication of decisions as a basis for express and direct conflict jurisdiction under article V, section 3(b)(3).

ARGUMENT

I.

THE DECISION OF THE SECOND DISTRICT COURT OF APPEAL IN THIS CASE EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISIONS OF HUBLER v. STATE, 458 So.2d 350 (Fla. 1st DCA 1984); JOHNSON v. STATE, 948 So.2d 1014 (Fla. 3rd DCA 2007); GILCHRIST v. STATE, 938 So.2d 654 (Fla. 4th DCA 2006); K.N.M. v. STATE, 793 So.2d 1195 (Fla. 5th DCA 2001); AND MISAPPLIES SHELTON v. STATE, 59 So.3d 248 (Fla. 4th DCA 2011).

A. Argument on the Merits

The Second District Court of Appeal concluded that the trial court's comments of Petitioner's failure to admit guilt and show remorse in imposing sentence "were made for legitimate purpose of refuting defense counsel's request for mitigation," and upheld Petitioner's sentence. (Appendix A, pg. 3) As explained below, the decision of the Second District expressly and directly conflicts with the First

District in Hubler, supra; the Third District in Johnson, supra; the Fourth District in Gilchrist, supra, the Fifth District in K.N.M., supra; and misapplies the Fourth District in Shelton, supra. The Petitioner respectfully submits that this court should grant discretionary review and resolve the conflict by quashing the decision of the Second District Court of Appeal.

In the decision of the Second District reported as Godwin v. State, 40 Fla.L.Weekly D615d (Fla. 2nd DCA 2015) (Appendix A), the decision of the postconviction court denying Petitioner's 3.850 motion was affirmed. The district court affirmed the denial of Petitioner's claim 5(b) stating:

> "we agree with the postconviction court that in context, the trial court's comments at sentencing (Petitioner's failure to admit guilt and show remorse) were made in connection with its rejection of the argument for mitigation." (Appendix A, pg. 3)

Thus, the Second District has expressly held that a trial court can aggravate and/or factor the length of a sentence on a defendant's failure to admit guilt and show remorse. The district court's decision is in express and direct conflict with other district's on the same question of law:

1. The First District in Hubler v. State, 458 So.2d 350 (Fla. 1st DCA 1984), wherein the court expressly stated that, "In the context of this case, however, where the defendant has at all times denied committing the battery charged and has persisted in maintaining his innocence we conclude that it was

improper for the trial court to aggravate the sentence imposed because the defendant failed to exhibit remorse for having committed the offense. This is but a corollary of the rule that a trial court may not impose a greater sentence because the defendant has availed himself of his constitutional right to a trial by jury." Id. at 353.

2. The Third District in Johnson v. State, 948 So.2d 1014 (Fla. 3rd DCA 2007), wherein the court expressly stated that, "Based upon the comments made by the trial court, it is clear that Johnson's refusal to acknowledge his guilt in this case improperly factored into the court's refusal to consider the requested downward departure sentence." Id. at 1017.

3. The Fourth District in Gilchrist v. State, 938 So.2d 654 (Fla. 4th DCA 2006), wherein the court expressly stated, "the record indicates that the court considered Gilchrist's failure to confess and lack of remorse in determining his sentence. This is so because the trial court indicated that lack of remorse and failure to confess were considered in not mitigating the sentence. Thus, this was a sentencing error." Id. at 658.

4. The Fifth District in K.N.M. v. State, 793 So.2d 1195 (Fla. 5th DCA 2001), wherein the court expressly stated, "Although the lack of remorse and unwillingness to admit guilt were not the only factors in the trial court's

decision to disregard the DJJ"s recommendation, these factors should not have been considered at all." Id. at 1198.

Misapplication.

5. The Fourth District in Shelton v. State, 59 So.3d 248 (Fla. 4th DCA 2011), wherein the court expressly stated that, "the court expressly stated that it was basing the life sentence on the defendant's record and his conduct in this case. We perceive the court's comments regarding the defendant's lack of remorse as the court's recognition that it lacked any grounds to mitigate his sentence. We see no evidence that the court used the defendant's lack of remorse against him." (Emphasis added) Id. at 250.

The law as interpreted by the Hubler, Johnson, Gilchrist, and K.N.M. jurists is correct and well settled, and this Honorable Court should now reaffirm that interpretation by accepting discretionary review and quashing the contrary decision of the Second District Court of Appeal below.

CONCLUSION

This Court has discretionary jurisdiction to review the decision below, and the court should exercise that jurisdiction to consider the merits of the Petitioner's argument.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document has been placed in the hands of Cross City C.I. officials for forwarding via U.S. Mail to: Supreme Court of Florida, 500 S. Duval Street, Tallahassee, Florida, 32399-1927; and Diana K. Bock, AAG, Dept. of Legal Affairs, Concourse Center #4, 3507 E. Frontage Road, suite 200, Tampa, Florida 33607 on this 3rd day of April, 2015.

Jonathan Godwin

Mr. Jonathan Godwin, DC # M07545
Cross City Correctional Institution
568 N.E. 255th Street
Cross City, Florida 32628

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this computer-generated brief is prepared in Times New Roman 14-point font and complies with the requirements of Fla. R App. P. 9.210(a)(2)

Jonathan Godwin

Mr. Jonathan Godwin, DC # M07545

APPENDIX

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List of Documents:

EXHIBIT "A"

IN THE SECOND DISTRICT COURT OF APPEAL, LAKELAND, FLORIDA

March 13, 2015

JONATHAN GODWIN, Appellant, v. STATE OF FLORIDA, Appellee.	)	Case No. 2D13-2117

BY ORDER OF THE COURT:

Upon consideration of a motion for rehearing, clarification and/or certification filed by the appellant on December 29, 2014,

IT IS ORDERED that the request for clarification is treated as a motion for written opinion and granted. The request for rehearing and/or certification is denied. Accordingly, the per curiam affirmed opinion dated December 12, 2014, is withdrawn, and the attached opinion is substituted therefor. No further motions will be entertained.

I HEREBY CERTIFY THE FOREGOING IS A
TRUE COPY OF THE ORIGINAL COURT ORDER.

JAMES BIRKHOLD, CLERK

c: Jonathan Godwin, pro se
Diana K. Bock, Asst. A.G.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

JONATHAN GODWIN,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

Case No. 2D13-2117

Opinion filed March 13, 2015.

Appeal from the Circuit Court for Hillsborough County; Samantha L. Ward and Debra K. Behnke, Judges.

Jonathan Godwin, pro se.

Pamela Jo Bondi, Attorney General, Tallahassee, and Diana K. Bock, Assistant Attorney General, Tampa for Appellee.

SILBERMAN, Judge.

Jonathan Godwin seeks review of an order denying his motion for postconviction relief under Florida Rule of Criminal Procedure 3.850 after a hearing. Godwin was convicted of armed false imprisonment and robbery with a firearm after a jury trial. We affirm the denial of each of Godwin's claims but write to explain our reasoning for affirming the denial of claim 5(b).

In rejecting claim 5(b) of Godwin's motion for relief, the postconviction court referred to the sentencing transcript and determined that the trial court's sentences were based on Godwin's violence during the commission of the crimes and the fear and suffering endured by the victims. The postconviction court found that the trial court's comments during sentencing were made to support rejection of defense counsel's argument for mitigation.

We recognize that a defendant's assertion of innocence and lack of remorse may not be factors that contribute to a defendant's sentence. See, e.g., Gage v. State, 147 So. 3d 1020, 1022 (Fla. 2d DCA 2014); Johnson v. State, 120 So. 3d 629, 631 (Fla. 2d DCA 2013); Brown v. State, 27 So. 3d 181, 183 (Fla. 2d DCA 2010). But we agree with the postconviction court that in context, the trial court's comments at sentencing were made in connection with its rejection of the argument for mitigation. See Shelton v. State, 59 So. 3d 248, 250 (Fla. 4th DCA 2011) ("We perceive the court's comments regarding the defendant's lack of remorse as the court's recognition that it lacked any grounds to mitigate his sentence. We see no evidence that the court used the defendant's lack of remorse against him.").

Because we conclude that the trial court's remarks in this case were made for the legitimate purpose of refuting defense counsel's request for mitigation, we affirm the denial of relief.

Affirmed.

ALTENBERND and KELLY, JJ., Concur.