

IN THE SUPREME COURT OF FLORIDA

JONATHAN GODWIN

Appellant,

v.

STATE OF FLORIDA,

Appellee.

Case No. SC15-563

ON PETITION FOR REVIEW FROM
THE SECOND DISTRICT COURT OF APPEAL
STATE OF FLORIDA

JURISDICTIONAL BRIEF OF RESPONDENT

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RECEIVED, 04/23/2015 02:03:53 PM, Clerk, Supreme Court

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STATEMENT OF THE CASE AND FACTS

The instant case arises out of and affirmance from the Second District Court of Appeal's regarding the Petitioner's challenge to the denial of his post conviction motion. Godwin v. State, ___ So. 3d ___ (Fla. 2d DCA 2015), 2015 WL 1467199 (Fla. 2d DCA March 13, 2015), 40 Fla. L. Weekly D651 (Fla. 2d DCA 2015). Petitioner argues that the District Court's opinion constitutes an express and direct conflict with the decisions of another district court of appeal and seeks substantive relief from this Court.

SUMMARY OF THE ARGUMENT

Petitioner fails to state a basis for this Court's exercise of its jurisdiction. Contrary to Petitioner's assertions, none of the opinions in his brief represent an express and direct conflict with the Second District's opinion in this case. Without an express and direct conflict, this Court should deny Petitioner's request.

ARGUMENT

**PETITIONER HAS FAILED TO ASSERT ANY GROUNDS
UPON WHICH THIS COURT MAY EXERCISE
JURISDICTION**

Petitioner has failed to state a basis for this Court's exercise of its conflict jurisdiction since Petitioner has failed to present either a new rule of law which stands in conflict with an opinion from this Court or a sister District Court of Appeals, or a diverging result from a current opinion from this Court or a sister District Court of Appeals on substantially similar controlling facts. Instead, the lower court's opinion aligns with the opinions of this Court and the sister District Courts of Appeals on substantially similar controlling facts. This Honorable Court should decline to accept jurisdiction to review this case

Conflict jurisdiction of this Court is limited to a narrow class of cases enumerated in the Florida Constitution. . Art. V, § 3(b), Fla. Const. The principal situations justifying the invocation of this Court's conflict jurisdiction include one of the following: First, the opinion from the district court of appeal must allege a new rule of law which stands in conflict with a current Florida Supreme Court or a sister District Court of Appeal opinion. Wallace v. State, 3 So. 3d at 1039; Nielsen v. City of Sarasota, 117 So. 2d 731, 734 (Fla. 1960). Second, the controlling facts of the new opinion must be substantially simi-

lar to a prior Florida Supreme Court or District Court of Appeal opinion, yet the results must diverge. Wallace, 3 So. 3d at 1039; Nielson, 117 So. 2d at 734-735 ("In order to assert our power to set aside the decisions of a Court of Appeal on the conflict theory we must find in that decision a real, live and vital conflict."). Our record does not show either.

Applying the first instance, the opinion from the Second District Court of Appeals in Godwin presents no new rule of law, let alone a new rule which stands in conflict to opinions from this Court. A plain reading reveals that the Godwin opinion aligns with the holdings of each case for which Petitioner claims a conflict. The sister District Court of Appeals opinions listed in Petitioner's Brief hold that a defendant's assertion of innocence and lack of remorse may not be factors that contribute to the aggravation of a defendant's sentence. Godwin, 2015 WL at *1. Following the line of Petitioner's cases, we see them point to the Florida Supreme Court cases of Holton v. State, 573 So. 2d 284, 292 (Fla. 1990) and Jackson v. Wainwright, 421 So. 2d 1385, 1388 (Fla. 1982) both of which stand for the precise point of law held by the Second District in Godwin. Since there exists no real, live or vital conflict between the opinions, the issue cannot serve as a basis for Florida Supreme Court conflict jurisdiction.

Applying the second instance, the opinion from the Second

District Court of Appeals in Godwin presents no diverging result after applying the same controlling facts to the same law. A plain reading reveals that the Godwin opinion aligns with the Shelton opinion of the Fourth District and produce the same result - that the postconviction court recognized that the lack of remorse serves to reject a mitigation argument, and not as an aggravator. Shelton v. State, 59 So. 3d 248, 250 (Fla. 4th DCA 2011). Since a plain reading of the opinions result in no conflict in the result, this issue cannot serve as a basis for the Florida Supreme Court conflict jurisdiction. This Court should reject Petitioner's request.

The rationale for limiting this Court's jurisdiction is the recognition that district courts "are courts primarily of final appellate jurisdiction and to allow such courts to become intermediate courts of appeal would result in a condition far more detrimental to the general welfare and the speedy and efficient administration of justice than that which the system was designed to remedy." Jenkins v. State, 385 So. 2d 1356, 1358 (Fla. 1980).

As this Court explained in The Florida Star v. B.J.F., 530 So. 2d 286, 288 (Fla. 1988), the State Constitution creates two separate concepts regarding this Court's discretionary review. The first concept is the broad general grant of subject-matter jurisdiction; the second more limited concept is a constitution-

al command as to how this Court may exercise its discretion in accepting jurisdiction. The Florida Star, 530 So. 2d at 288. These bases are not served by accepting jurisdiction in a case where the district court has not issued an opinion conflicting with this Court or a sister Court of Appeal.

CONCLUSION

Based upon the foregoing authorities and arguments, Respondent respectfully requests that this Honorable Court decline to accept jurisdiction to review this case.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to Mr. Jonathan Godwin, DC#M07545, Cross City Correctional Institution, 568 N.E. 255th Street, Cross City, Florida 32628 on May 22, 2015.

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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