IN THE SUPREME COURT OF FLORIDA

ROBIN EUSTACHE,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Case No. SC16-1712

JURISDICTIONAL BRIEF OF RESPONDENT

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PRELIMINARY STATEMENT

Petitioner was the defendant and Respondent was the Prosecution in the Criminal Division of the Circuit Court of the Fifteenth Judicial Circuit, and for Palm Beach County, Florida. Petitioner was Appellant and Respondent was Appellee in the District Court of Appeal of Florida, Fourth District.

In this brief, the parties shall be referred to as they appear before this Honorable Court, except that Respondent may also be referred to as the State. "JIB" refers to Petitioner's Brief on Jurisdiction.

All emphasis in this brief is supplied by Respondent unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

(limited to the issue of jurisdiction)

Noting that in determining jurisdiction, this Court is limited to the facts apparent on the face of the opinion in *Eustache v. State*, 199 So. 3d 484 (Fla. 4th DCA 2016), Respondent presents the pertinent facts as they appear in the opinion below:

> In 2006, Eustache entered a plea to robbery with a firearm, which carries a ten-year minimum mandatory sentence. § 775.087(2)(a)1., Fla. Stat. (2005). Instead, however, he was sentenced as a youthful offender to four years in prison followed by two years of probation. He subsequently violated probation by committing two new drug offenses. After entering a plea admitting the violation, his probation was revoked, and he was sentenced to fifteen years in prison.
>
> Eustache moved for relief under Florida Rule of Criminal Procedure 3.850, contending that his trial counsel was ineffective for not advising him that he was subject to a ten-year minimum mandatory sentence upon revocation of probation. The trial court granted the motion and allowed Eustache to withdraw his plea.
>
> In 2013, represented by new counsel, Eustache entered an open plea to the violation of probation. The parties advised the court that, if it revoked Eustache's probation, it was required to impose at least the ten-year minimum mandatory sentence. The court revoked probation and sentenced Eustache to fifteen years in prison with a ten-year minimum mandatory sentence. No direct appeal was taken.

> Eustache moved for relief under rule 3.850 a second time, asserting three alternative grounds for relief: (1) his plea was involuntary because counsel misadvised him that the court was required to impose the minimum mandatory sentence; (2) his counsel was ineffective for advising the court that it was required to impose the minimum mandatory sentence; and (3) his sentence is illegal, either because the court was not permitted to impose the minimum mandatory sentence, or because the trial court erroneously believed that it was required to impose the minimum mandatory sentence. Eustache asserted that the imposition of the minimum mandatory sentence was either prohibited under our decision in *Blacker v. State,* 49 So.3d 785 (Fla. 4th DCA 2010), or discretionary under our decision in *Goldwire v. State,* 73 So.3d 844 (Fla. 4th DCA 2011).
>
> The State contended that both Eustache and the trial court were properly advised, pursuant to *Goldwire,* that once the trial court exercised its discretion to revoke Eustache's probation and impose a sentence above the youthful offender cap, it was required to impose at least the minimum mandatory sentence. The trial court adopted the State's reasoning in summarily denying the motion. Eustache gave notice of appeal.

199 So. 3d at 486.

In its *en banc* opinion, the Fourth District affirmed the trial court's order, explaining:

> We now recede from the language in *Blacker* stating that a minimum mandatory sentence cannot be imposed upon a defendant, initially sentenced as a youthful offender, who later substantively violates probation or community control. We hold, as we did in *Goldwire,* that upon a substantive violation of youthful offender supervision, the trial court has the discretion either to sentence

> under the cap provisions of section 958.04(2), Florida Statutes (assuming a term for a cap sentence is still available), or to impose any sentence it could have imposed when the defendant was originally sentenced, regardless of the defendant's youthful offender designation, under section 948.06(2), Florida Statutes. Where the trial court chooses the second option, and the original sentence that could have been imposed was a minimum mandatory sentence, then that sentence must be imposed upon revocation of supervision.

Id. at 489-90.

The opinion noted that, "[t]o the extent the Fifth District in *Christian* agrees with our statement in *Blacker* that a minimum mandatory sentence cannot be imposed upon a defendant who substantively violates youthful offender supervision, we certify conflict." *Id.* at 490. The Fourth District also certified a question of great public importance:

> WHERE A DEFENDANT IS INITIALLY SENTENCED TO PROBATION OR COMMUNITY CONTROL AS A YOUTHFUL OFFENDER, AND THE TRIAL COURT LATER REVOKES SUPERVISION FOR A SUBSTANTIVE VIOLATION AND IMPOSES A SENTENCE ABOVE THE YOUTHFUL OFFENDER CAP UNDER SECTIONS 958.14 AND 948.06(2), FLORIDA STATUTES, IS THE COURT REQUIRED TO IMPOSE A MINIMUM MANDATORY SENTENCE THAT WOULD HAVE ORIGINALLY APPLIED TO THE OFFENSE?

Id.

Petitioner filed a notice to invoke the discretionary jurisdiction of this Court.

SUMMARY OF ARGUMENT

ISSUE I: Although the Fourth District Court of Appeal certified conflict with a decision out of the Fifth District Court of Appeal, the conflicting language from the Fifth District is dicta and fails to provide a basis for conflict jurisdiction. The opinion cited from the Fifth District addressed a different issue on appeal than that involved in the present case. Further, the additional cases cited by Appellant are also not in direct and express conflict with the opinion in this case. The State therefore submits this Court does not have conflict jurisdiction.

ISSUE II: Pursuant to Florida Rule of Appellate Procedure 9.120(d), Respondent does not address the issue of jurisdiction on the certified question of great public importance.

ARGUMENT

ISSUE I: THE FOURTH DISTRICT'S OPINION IN THE INSTANT CASE IS NOT IN EXPRESS AND DIRECT CONFLICT WITH THE FIFTH DISTRICT COURT OF APPEAL.(RESTATED).

The Florida Constitution provides: "The supreme court ... [m]ay review any decision of a district court of appeal ... 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." Article V, §3(b)(3), Fla. Const.; *see also* Fla. R. App. P. 9.030(a)(2)(A)(iv). "[I]t is conflict of decisions, not conflict of opinions or reasons that supplies

jurisdiction for review by certiorari." *Jenkins v. State*, 385 So. 2d 1356, 1359 (Fla. 1980) (quoting *Gibson v. Maloney*, 231 So. 2d 823, 824 (Fla. 1970)).

In the instant case, the Fourth District addressed the issue of whether minimum mandatory sentencing provisions apply to defendants "who are initially sentenced to probation or community control as youthful offenders, but whose supervision is later revoked for a substantive violation." *Eustache*, 199 So. 3d at 485. Relevant to the determination of whether conflict jurisdiction exists, the court opined:

> We hold, as we did in *Goldwire*, that upon a substantive violation of youthful offender supervision, the trial court has the discretion either to sentence under the cap provisions of section 958.04(2), Florida Statutes (assuming a term for a cap sentence is still available), or to impose any sentence it could have imposed when the defendant was originally sentenced, regardless of the defendant's youthful offender designation, under section 948.06(2), Florida Statutes. Where the trial court chooses the second option, and the original sentence that could have been imposed was a minimum mandatory sentence, that that sentence must be imposed upon revocation of supervision.

Id. (footnote omitted).

The Fourth District noted that, "[t]o the extent the Fifth District in *Christian* agrees with our statement in *Blacker* that a minimum sentence cannot be imposed upon a defendant who

substantively violates youthful offender supervision, we certify conflict." *See Eustache*, 199 So. 3d at 490.

Petitioner contends that this Court has jurisdiction because the Fourth District's decision in this case expressly and directly conflicts with its own precedent and with the opinions of other jurisdictions, including *Blacker v. State*, 49 So. 3d 785 (Fla. 4th DCA 2010), *Christian v. State*, 84 So. 3d 437 (Fla. 5th DCA 2012), and *State v. Arnette,* 604 So. 2d 482 (Fla. 1992) (JIB 4-6). Respondent notes that Petitioner stated in his brief that the conflict is actually between those cases and the Fourth District's opinion in *Goldwire v. State* 73 So. 3d 844 (Fla. 4th DCA 2011) (IB 5-6), but the holding in the present case is in agreement with the holding in *Goldwire. See Eustache*, 199 So. 3d at 489.

The State contends no direct and express conflict exists between the instant case and *Christian*, *Arnette* or *Blacker.*

***a) Christian v. State*, 84 So. 3d 437 (Fla. 5th DCA 2012)**

The State argues that *Christian* does not establish "express and direct conflict" with this case because (1) the issue on appeal in *Christian* is not the same issue that was raised on appeal in this case, and therefore the Fifth District did not expressly rule on the whether minimum mandatory sentences apply to youthful offenders after revocation of probation for a substantive violation; and (2) the language in *Christian* that

conflicts with the holding in the present case is mere dicta and fails to provide a basis for conflict jurisdiction. *See Ciongoli v. State*, 337 So. 2d 780, 782 (Fla. 1976)(failing to find conflict between appellate districts for purposes of supreme court jurisdiction because conflicting language was "mere Obiter dicta"); *see generally, Bunn v. Bunn*, 311 So. 2d 387, 389 (Fla. 4th DCA 1975) (noting that "a purely gratuitous observation or remark made in pronouncing an opinion and which concerns some rule, principle or application of law not necessarily involved in the case or essential to its determination is obiter dictum, pure and simple," and it has "no precedential value"); *State ex rel. Biscayne Kennel Club v. Bd. of Bus. Regulation of Dep't of Bus. Regulation of State*, 276 So. 2d 823 (Fla. 1973)("The statement of the District Court of Appeal in its opinion . . . was not essential to the decision of that court and is without force as precedent.")

Specifically, in *Christian*, the Fifth District addressed the issue of whether a youthful offender's violation of probation resulting from illicit drug use could be classified as "substantive" where the State did not charge and convict him of any new crime related to the drug use. *See id.* at 439. The Fifth District held that the violation was a substantive violation, because illicit drug use is a crime and the State is not required to independently prosecute new criminal charges to

establish a substantive violation. *See id.* at 439-40 (citing *Robinson v. State*, 72 So. 2d 1346 (Fla. 5th DCA 1997)). Thus, the issue decided by the Fifth District in *Christian* is distinct from the issue decided by the Fourth District in this case.

After ruling on the issue raised by the appellant, the Fifth District in *Christian* discussed additional issues "relating to the Youthful Offender Act" addressed by Florida courts, to "help clear up the confusion that underpins Christian's argument." *Id.* at 441. As part of that discussion, **in a footnote**, the Fifth District expressed a view contrary to the Fourth District's view in *Goldwire*, and thus the present case, regarding the application of minimum mandatory sentences following a youthful offender's substantive violation of probation. *See Christian*, 84 So. 3d at 444 n.7 (disagreeing with the Fourth District that a youthful sentence above the six year cap, following a substantive violation of probation, allows the imposition of a minimum mandatory sentence). Again, this language is clearly dicta and does not establish "direct and express" conflict with the holding of the present case. *See supra, Ciongoli*, 337 So. 2d at 781; *Bunn*, 311 So. 2d at 389.

***b) State v. Arnette*, 604 So. 2d 482 (Fla. 1992)**

In *Arnette,* cited by Petitioner, this Court held that youthful offenders maintain youthful offender status even after violating a condition of community control, and the court

considered the issue under the pre-1985 version of the youthful offender statute. 604 So. 2d at 484. However, *Arnette* did not address the application of mandatory minimum sentencing enhancements to youthful offenders after revocation for substantive violations based on the statute now in effect for youthful offenders. As explained by the Second District Court of Appeal:

> The *Arnette* decision does not address the application of mandatory minimums to youthful offender sentences and is thus limited to the application of the sentence cap; as noted above, in 1990 the legislature amended that cap to apply to technical violations only. *Arnette* simply does not support application of the sentencing limitations of 958.04 to a youthful offender following a substantive violation of probation.

Yegge v. State, 186 So. 3d 553, 557 (Fla. 2d DCA 2015), *review granted*, 173 So. 3d 968 (Fla. 2015), and *review dismissed*, 180 So. 3d 128 (Fla. 2015). *Yegge,* similar to this case, concluded that the trial court did not err when it revoked probation and imposed a minimum mandatory sentence on the appellant, who was a youthful offender who committed a substantive violation of probation. *See id.* at 556-57.

c) *Blacker v. State*, 49 So. 3d 785 (Fla. 4th DCA 2010)

The Fourth District's previous decision in *Blacker* cannot provide the basis for this Court's jurisdiction on the basis of "express and direct" conflict, because *Blacker* does not show

conflict with another district court of appeal. *See* Article V, §3(b)(3), Fla. Const.; Fla. R. App. P. 9.030(a)(2)(A)(iv). Further, the Fourth District expressly receded from *Blacker* in its opinion in this case: "We now recede from the language in *Blacker* stating that a minimum mandatory sentence cannot be imposed upon a defendant, initially sentenced as a youthful offender, who later substantively violates probation or community control." *Id.* at 489.

In summary, there is no express and direct conflict between the instant case and another district court of appeal.

ISSUE II: THE FOURTH DISTRICT HAS CERTIFIED A QUESTION OF GREAT PUBLIC IMPORTANCE; RESPONDENT WILL NOT ADDRESS JURISDICTION ON THIS ISSUE.

Pursuant to Florida Rule of Appellate Procedure 9.120(d), Respondent does not address this Court's jurisdiction regarding the certified question of great public importance.

CONCLUSION

Based on the foregoing, the State respectfully requests this Honorable Court exercise its discretionary jurisdiction accordingly.

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished by U.S. Mail to Robin Eustache, DC#W29753, Okeechobee C.I., 3420 N.E. 168th Street, Okeechobee, FL 34972, on November 15, 2016.

CERTIFICATE OF COMPLIANCE

I certify that this brief was computer generated using Courier New 12 point font.

Respectfully submitted and certified,
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