

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,)
)
 Petitioner,)
)
 v.)
)
 BUDRY MICHEL,)
)
 Respondent.)
)
 _____)

CASE NO. SC16-2187

Respondent's Brief on Jurisdiction

CAREY HAUGHWOUT
 Public Defender
 Fifteenth Judicial Circuit
 421 Third Street
 West Palm Beach, Florida 33401
 (561) 355-7600

Paul Edward Petillo
 Assistant Public Defender
 Florida Bar No. 508438
 ppetillo@pd15.state.fl.us
 appeals@pd15.org

Attorney for Respondent

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TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES	ii
SUMMARY OF THE ARGUMENT	1

ARGUMENT

THERE ARE NOT ENOUGH FACTS WITHIN THE FOUR CORNERS OF THE FOURTH DISTRICT’S DECISION TO DETERMINE WHETHER IT CONFLICTS WITH THE FIFTH DISTRICT’S DECISIONS IN <i>STALLINGS</i> AND <i>WILLIAMS</i>	2
CONCLUSION	4
CERTIFICATE OF SERVICE	4
CERTIFICATE OF FONT	4

TABLE OF AUTHORITIES

Cases

Atwell v. State,
197 So. 3d 1040 (Fla. 2016)2, 3

Reaves v. State,
485 So. 2d 829 (Fla. 1986)2

Rembert v. State,
No. SC15-2175 (Fla. Dec. 13, 2016).....3

Stallings v. State,
198 So. 3d 1081 (Fla. 5th DCA 2016)2, 3

Williams v. State,
198 So. 3d 1084 (Fla. 5th DCA 2016)2, 3

Woods v. State,
No. SC14-544 (Fla. Dec. 13, 2016).....3

Florida Constitution

Art. V, § 3(b)(3)2, 3

Art. V, § 3(b)(4)2

SUMMARY OF THE ARGUMENT

There is no express and direct conflict of decisions because there are not enough facts within the four corners of the Fourth District's decision to determine whether it conflicts with the decisions of the Fifth District Court of Appeal. Accordingly, this Court should deny review.

ARGUMENT

THERE ARE NOT ENOUGH FACTS WITHIN THE FOUR CORNERS OF THE FOURTH DISTRICT'S DECISION TO DETERMINE WHETHER IT CONFLICTS WITH THE FIFTH DISTRICT'S DECISIONS IN *STALLINGS* AND *WILLIAMS*

The State seeks review under article V, section 3(b)(3), of the Florida Constitution, arguing that the Fourth District's decision expressly and directly conflicts with the Fifth District's decisions in *Stallings v. State*, 198 So. 3d 1081 (Fla. 5th DCA 2016), and *Williams v. State*, 198 So. 3d 1084 (Fla. 5th DCA 2016).¹

To establish conflict jurisdiction, the conflict must “appear within the four corners of the majority decision.” *Reaves v. State*, 485 So. 2d 829, 830 (Fla. 1986). Here, there are not enough facts within the four corners of the Fourth District's decision to determine whether there is conflict with *Stallings* and *Williams*. Unlike those decisions, the Fourth District's decision contains no discussion of Michel's PPRD or whether he has one. And although it may be inferred² that Michel's PPRD—like *Stallings*'s and *Williams*'s—is not known or has not been established,

¹ Although the Fourth District stated, “We also certify conflict with the Fifth District Court of Appeal”, it did not certify that it was in “*direct* conflict with the *decision* of another district court of appeal.” Art. V, § 3(b)(4), Fla. Const. (emphasis added).

² Inferred, that is, from the Fourth District's disagreement with the Fifth District's suggestion that relief under *Atwell v. State*, 197 So. 3d 1040 (Fla. 2016), depends on the establishment of a PPRD.

conflict jurisdiction under section 3(b)(3) requires, not inferences, but *express* and direct conflict of decisions.

Moreover, even if this Court has a jurisdictional basis to review this case, this Court is not required to do so. For example, in two recent cases this Court reversed for resentencing on the authority of *Atwell v. State*, 197 So. 3d 1040 (Fla. 2016), and notwithstanding the State's argument, based on *Stallings* and *Williams* that relief depends on the PPRD. *See Woods v. State*, No. SC14-544 (Fla. Dec. 13, 2016); *Rembert v. State*, No. SC15-2175 (Fla. Dec. 13, 2016).

For these reasons, Michel respectfully requests this Court to deny review.

CONCLUSION

This Court should deny review.

CERTIFICATE OF SERVICE

I certify that this brief was served to Assistant Attorney Matthew Ocksrider, 1515 N. Flagler Drive, West Palm Beach, Florida 33401, by email at CrimAppWPB@MyFloridaLegal.com this 28th day of December, 2016.

/s/ PAUL EDWARD PETILLO
PAUL EDWARD PETILLO

CERTIFICATE OF FONT

I certify that this brief was prepared with 14 point Times New Roman type in compliance with Florida Rule of Appellate Procedure 9.210(a)(2).

/s/ PAUL EDWARD PETILLO
PAUL EDWARD PETILLO