Filing # 50046680 E-Filed 12/14/2016 02:02:29 PM

RECEIVED, 12/14/2016 02:03:29 PM, Clerk, Supreme Court

IN THE SUPREME COURT OF THE STATE OF FLORIDA

STATE OF FLORIDA,
Petitioner,

v.

BUDRY MICHEL,
Respondent.

Case No. SC16-2187
Fourth District Court of Appeal Case No. 4D13-1123

PETITIONER'S BRIEF ON JURISDICTION

PAMELA JO BONDI
ATTORNEY GENERAL
Tallahassee, Florida

CELIA TERENZIO
Senior Assistant Attorney General
Bureau Chief
Florida Bar No. 0656879

MATTHEW STEVEN OCKSRIDER
Assistant Attorney General
Florida Bar No. 0070148
1515 North Flagler Drive
Ninth Floor
West Palm Beach, Florida 33401
crimappwpb@myfloridalegal.com
(561) 837-5016

Counsel for Petitioner

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

PRELIMINARY STATEMENT 1

STATEMENT OF THE CASE AND FACTS 1

SUMMARY OF THE ARGUMENT 2

ARGUMENT 2

THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL EXPRESSLY CONFLICTS WITH DECISIONS OF THE FIFTH DISTRICT COURT OF APPEAL.

CONCLUSION 6

CERTIFICATE OF SERVICE 7

CERTIFICATE OF TYPEFACE COMPLIANCE 7

TABLE OF AUTHORITIES

Cases

Ansin v. Thurston,
101 So. 2d 808 (Fla. 1958) 3

Atwell v. State,
197 So. 3d 1040 (Fla. 2016) 2, 3, 4

Hegwood v. State,
No. SC14-491 (Fla. December 13, 2016)...5

LeCroy v. State,
No. SC14-863 (Fla. December 13, 2016)...5

Michel v. State,
No. 4D13-1123 (Fla. 4th DCA November 9, 2016)..................................... 1, 3, 4

Miller v. Alabama,
132 S. Ct. 2455 (2012)...4

N&L Auto Parts Co. v. Doman,
117 So. 2d 410 (Fla. 1960) 2

Reaves v. State,
485 So. 2d 829 (Fla. 1986) 3

Stallings v. State,
198 So. 3d 1081 (Fla. 5th DCA 2016) 4, 5

State v. Vickery,
961 So. 2d 309 (Fla. 2007) 3

Wallace v. State,
No. SC14-539 (Fla. December 13, 2016)...5

Williams v. State,
198 So. 3d 1084 (Fla. 5th DCA 2016) 4, 5

<u>Constitutional Provisions</u>

Art. V, § 3(b)(3), Fla. Const...2

PRELIMINARY STATEMENT

The petitioner, State of Florida, was the prosecution in the trial court and the Appellee before the Fourth District Court of Appeal. The petitioner will be referred to herein as "the State." The respondent, Budry Michel, was the defendant in the trial court and the Appellant before the Fourth District Court of Appeal. The respondent will be referred to as "Respondent."

STATEMENT OF THE CASE AND FACTS

The Fourth District Court of Appeal limited its discussion of the case to the following:

> We reverse the order denying appellant's motion for postconviction relief and remand for resentencing pursuant to *Atwell v. State*, 197 So. 3d 1040 (Fla. 2016). We also certify conflict with the Fifth District Court of Appeal. We respectfully disagree with *Stallings v. State*, 41 Fla. L. Weekly D1934 (Fla. 5th DCA Aug. 19, 2016), and *Williams v. State*, 41 Fla. [L.] Weekly D1936 (Fla. 5th DCA Aug. 19, 2016), to the extent that those decisions suggest that relief under *Atwell* is dependent on the defendant's presumptive parole release date.
>
> Our reading of the Florida Supreme Court's decision in *Atwell* is that Florida's existing parole system does not provide the individualized sentencing considerations required by *Miller v. Alabama*, 132 S. Ct. 2455 (2012). Thus, as in *Atwell*, appellant is entitled to be resentenced pursuant to the sentencing provisions enacted in Chapter 2014-220, Laws of Florida. *Atwell*, 197 So. 3d at 1050.

Michel v. State, No. 4D13-1123, at *1 (Fla. 4th DCA November 9, 2016)

SUMMARY OF THE ARGUMENT

This Court should accept jurisdiction. The Fourth District certified conflict with the Fifth District on the same point of law - whether a court must first consider a juvenile offender's presumptive parole release date (PPRD) before determining whether he or she is eligible for resentencing pursuant to *Atwell v. State*, 197 So. 3d 1040 (Fla. 2016).

ARGUMENT

THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL EXPRESSLY CONFLICTS WITH DECISIONS OF THE FIFTH DISTRICT COURT OF APPEAL.

I. Basis of jurisdiction.

Petitioner seeks jurisdiction because the decision of the Fourth District "expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law." Art. V, § 3(b)(3), Fla. Const.; *see also* Fla. R. App. P. 9.030(a)(2)(vi). In this circumstance, "[t]he question of a conflict is of concern to this Court only in those cases where the opinion and judgment of the district court announces a principle or principles of law that are conflict with a principle or principles of law of another district court or this Court." *N&L Auto Parts Co. v. Doman*, 117 So. 2d 410, 412 (Fla. 1960). The conflict between decisions "must be express and direct" and "must appear within

the four corners of the majority decision." *Reaves v. State*, 485 So. 2d 829, 830 (Fla. 1986). This Court has explained that while the district courts of appeal were designed to be the final arbiters of the vast majority of disputes in this State, this Court will exercise its discretion in order to maintain uniformity in the law. *Ansin v. Thurston*, 101 So. 2d 808, 810 (Fla. 1958).

Additionally, this Court has explained the procedure district courts use in order to certify that conflict exists:

> "[D]istrict court opinions accepted [for review as certified conflict cases under article V, section 3(b)(4) of the Florida Constitution] . . . almost uniformly meet two requirements: they use the word "certify" or some variation of the root word "certify.-" in connection with the word "conflict"; and, they indicate a decision from another district court upon which the conflict is based."

State v. Vickery, 961 So. 2d 309, 311 (Fla. 2007) (citing Harry Lee Anstead, Gerald Kogan, Thomas D. Hall, & Robert Craig Waters, *The Operation and Jurisdiction of the Supreme Court of Florida*, 29 Nova L. Rev. 431, 529 (2005)). The opinion from the Fourth District in this case does just this. *See Michel*, No. 4D13-1123 at *1 (stating "[w]e also certify conflict with the Fifth District Court of Appeal.").

II. The decision in this case certified conflict with the Fifth District.

In *Atwell v. State*, 197 So. 3d 1040 (Fla. 2016), this Court held that a juvenile offender's life sentence with the possibility of parole violated the Eighth

Amendment and *Miller v. Alabama*, 132 S. Ct. 2455, 1050 (2012), for two reasons. First, this Court concluded that based upon the individualized facts of that juvenile offender's case, which included a presumptive parole release date (PPRD) beyond his natural lifespan, his sentence "effectively resemble[d] a mandatorily imposed life sentence without parole . . . ." *Id.* Secondarily, this Court concluded that Florida's parole system does not provide for "the type of individualized sentencing considerations *Miller* requires." *Id.*

In this case, applying *Atwell*, the Fourth District reversed an order denying Respondent's postconviction motion and remanded for resentencing pursuant to *Atwell* and "the sentencing provisions enacted in Chapter 2014-220, Laws of Florida." *Michel*, No. 4D13-1123 at *1. In doing so, it concluded that *Atwell* mandated resentencing irrespective of a juvenile offender's PPRD because Florida's parole system "does not provide the individualized sentencing considerations required by *Miller* . . . ." *Id.* In reaching this decision, the Fourth District "respectfully disagree[d]" with the Fifth District on this point of law and certified conflict with *Stallings v. State*, 198 So. 3d 1081 (Fla. 5th DCA 2016), and *Williams v. State*, 198 So. 3d 1084 (Fla. 5th DCA 2016).

Those decisions, which also remanded in light of this Court's decision in *Atwell*, concluded that a trial court must initially determine a juvenile offender's

PPRD before determining whether resentencing is necessary under *Atwell*. *Stallings*, 198 So. 3d at 1083; *Williams*, 198 So. 3d at 1086. Thus, both *Stallings* and *Williams* concluded that this Court employed a two-step process in *Atwell*, where a trial court is mandated to initially consider individualized factors of the juvenile offender's case, while the Fourth District concluded that resentencing was required in any case where a juvenile offender receives a life with the possibility of parole sentence, irrespective of the individual characteristics of a juvenile offender's sentence. Therefore, the Fourth District's certification of conflict with the Fifth District's decisions in *Stallings* and *Williams* on this point of law confers jurisdiction upon this Court for review. It should be noted that this conflict issue was raised before this Court in three other cases, each of which have now been remanded for resentencing without comment on the conflict present in this case. *See Hegwood v. State*, No. SC14-491 (Fla. December 13, 2016); *Wallace v. State*, No. SC14-539 (Fla. December 13, 2016); *LeCroy v. State*, No. SC14-863 (Fla. December 13, 2016).

CONCLUSION

Based on the foregoing argument, Petitioner respectfully requests that this Honorable Court exercise its jurisdiction in this cause.

Respectfully submitted,

PAMELA JO BONDI
ATTORNEY GENERAL
Tallahassee, Florida

/s/Celia Terenzio
CELIA TERENZIO
Senior Assistant Attorney General
Bureau Chief
Florida Bar No. 0656879

/s/Matthew Steven Ocksrider
MATTHEW STEVEN OCKSRIDER
Assistant Attorney General
Florida Bar No. 0070148
1515 North Flagler Drive
Ninth Floor
West Palm Beach, FL 33401
(561) 837-5016

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing was sent by electronic mail to Paul Petillo, Esq., Assistant Public Defender, Counsel for Petitioner, 421 Third Street, West Palm Beach, FL 33401 at appeals@pd15.state.fl.us, ppetillo@pd15.state.fl.us, and alefler@pd15.state.fl.us on December 14, 2016.

/s/Matthew Steven Ocksrider
MATTHEW STEVEN OCKSRIDER
Counsel for Petitioner

CERTIFICATE OF TYPEFACE COMPLIANCE

I HEREBY CERTIFY that this brief has been prepared in Times New Roman font, 14 point, and double spaced.

/s/Matthew Steven Ocksrider
MATTHEW STEVEN OCKSRIDER
Counsel for Petitioner