IN THE SUPREME COURT OF FLORIDA

DANTE RASHA MORRIS,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Case No. SC16-2271

ON DISCRETIONARY REVIEW FROM THE
THE DISTRICT COURT OF APPEAL,
SECOND DISTRICT OF FLORIDA

JURISDICTIONAL BRIEF OF RESPONDENT

PAMELA JO BONDI
ATTORNEY GENERAL

JOHN KLAWIKOFSY
Chief-Assistant Attorney General
Bureau Chief, Tampa Criminal Appeals
Florida Bar No. 930997

WENDY BUFFINGTON
Assistant Attorney General
Fla. Bar No. 779921

Office of the Attorney General
Concourse Center 4
3507 E. Frontage Road, Suite 200
Tampa, Florida 33607-7013
Primary E-Mail:
CrimAppTPA@myfloridalegal.com
Secondary E-Mail:
Wendy.Buffington@myfloridalegal.com
(813)287-7900; (813)281-5500 (FAX)

COUNSEL FOR RESPONDENT

TABLE OF CONTENTS

PAGE#

TABLE OF CITATIONS

STATEMENT OF THE CASE AND FACTS

This case arises from the Second District Court of Appeal's affirming Petitioner Dante Rashad Morris's sentences for attempted felony murder and attempted armed robbery. Morris v. State, --- So.3d ---, 2016 WL 7177700 (Fla. 2d DCA Dec. 9, 2016). The relevant portion of that opinion provides:

> In denying Mr. Morris' rule 3.800(b) motion, the trial court also rejected Mr. Morris' argument that pursuant to Henry v. State, 175 So.3d 675 (Fla. 2015), cert. denied, --- U.S. ----, 136 S.Ct. 1455, 194 L.Ed.2d 552 (2016), he was entitled to resentencing under the framework established by chapter 2014-220, Laws of Florida. We affirm that aspect of the trial court's order on the authority of this court's decision in Williams v. State, 197 So.3d 569 (Fla. 2d DCA 2016). But see Peterson v. State, 193 So.3d 1034 (Fla. 5th DCA 2016).
>
> Judgments and sentences affirmed; remanded for trial court to file corrected cost order.

Morris v. State, No. 2D14-4165, 2016 WL 7177700, at 1 (Fla. 2d DCA Dec. 9, 2016).

SUMMARY OF ARGUMENT

This Court should decline to accept jurisdiction because Petitioner Morris has failed to show the district court opinion actually, expressly and directly conflicts with any other district court opinion or opinion of this Court. To the contrary, this Court has recently, post-Kelsey v. State, 2016 WL 7159099 (Fla. Dec. 8, 2016), declined to exercise jurisdiction

over similarly situated juveniles in Ryan Hill v. State, 2017 WL 24659 (Fla. January 3, 2017), Justice Pariente dissenting in an opinion in which Justice Quince concurs; and Abrakata v. State, 2017 WL 24657 (Fla. Jan. 3, 2017), Justice Pariente dissenting in an opinion in which Justice Quince concurs. This Court should do the same here.

ARGUMENT

THIS COURT SHOULD DECLINE TO ACCEPT DISCRETIONARY JURISDICTION BECAUSE PETITIONER MORRIS CANNOT SHOW THE DISTRICT COURT OPINION ACTUALLY, EXPRESSLY AND DIRECTLY CONFLICTS WITH ANOTHER DISTRICT COURT OPINION OR OPINION OF THIS COURT.

Where a district court opinion acknowledges, without certifying conflict, another jurisdiction may hold a contrary view, the petitioner must show the "decision actually 'expressly and directly' conflicts with the decision of another court." See State v. Vickery, 961 So.2d 309 (Fla. 2007):

> The difference is that a certification of conflict provides us with jurisdiction per se. On the other hand, when a district court does not certify the conflict, ***our jurisdiction to review the case depends on whether the decision actually "expressly and directly" conflicts with the decision of another court.*** We therefore advise district courts that when they intend to certify conflict under article V, section 3(b)(4) of the Florida Constitution, they use the constitutional term of art "certify."

State v. Vickery, 312; All emphasis added.

This Court's express and direct conflict jurisdiction must be evidenced in the four corners of the opinion. Reaves v. State, 485 So. 2d 829, 830 (Fla. 1986).

Here, Morris cannot show any actual conflict. Though the opinion affirms Mr. Morris's sentence based on the Second District's precedent in Williams v. State, 197 So.3d 569 (Fla. 2d DCA 2016) and suggests the Fifth District's opinion in Peterson v. State, 193 So.3d 1034 (Fla. 5th DCA 2016), review pending SC16-1211, would hold to the contrary, they did not certify conflict between the opinions as they did in Roman v. State, 203 So. 3d 1019, 1020 (Fla. 2d DCA 2016), review pending SC16-2148. In Roman, the juvenile defendant received a 55-year prison sentence:

> "We certify conflict with *Peterson v. State*, 193 So.3d 1034 (Fla. 5th DCA 2016) (reversing a juvenile offender's fifty-six-year prison sentence for a nonhomicide offense).",

In Williams, the defendant was 17 when he committed the crimes for which he was sentence to 50 years. Williams at 570. Peterson was 17 when he committed his crimes, and 18 when sentenced to 56 years in prison. Peterson at 1035. Here, the opinion recites neither the critical facts of Mr. Morris's age nor the sentence he received. Therefore, despite the district court's suggestion of conflict, no such actual conflict is apparent from the opinion.

Though Mr. Morris has recited the crucial facts in his jurisdictional brief, (Morris was 15 when he committed his crimes for which he was sentenced to 30 years in prison), these facts show the opinion affirming his sentence is not in conflict with Peterson. Even if this Court were to look beyond the opinion to the facts of the case, it should decline to exercise jurisdiction as it recently has in Ryan Hill v. State, 2017 WL 24659 (Fla. January 3, 2017), (a 14-year-old juvenile sentenced to 35 years), Justice Pariente dissenting in an opinion in which Justice Quince concurs; and Abrakata v. State, 2017 WL 24657 (Fla. Jan. 3, 2017), (a 17 year-old juvenile sentenced to 25 years in prison), Justice Pariente dissenting in an opinion in which Justice Quince concurs, because a Graham v. Florida, 560 U.S. 48 (2010) violation is not triggered by this 15-year-old juvenile's 30-year prison sentence.

The First District in Abrakata v. State, 168 So. 3d 251, 251-52 (Fla. 1st DCA 2015), review denied, No. SC15-1325, 2017 WL 24657 (Fla. Jan. 3, 2017), rejected Abrakata's claim that his 25-year minimum mandatory sentence for attempted second degree murder, committed in 2011 when he was 17 years old, violated Graham. In declining to accept review, this Court implicitly agreed:

> Upon review of the State's response to this Court's order to show cause dated September 28, 2015, the Court has determined that it should decline to accept jurisdiction in this case. See Henry v. State, 175 So.

> 3d 675 (Fla. 2015); *Gridine v. State*, 175 So. 3d 672 (Fla. 2015). The petition for discretionary review is, therefore, denied.

Abrakata v. State, No. SC15-1325, 2017 WL 24657, at 1 (Fla. Jan. 3, 2017).

Nothing in Kelsey requires a different outcome in this case. See Judge Benton's dissent from the First District majority's affirmance (rejected by this Court) of Kelsey's 45-year sentence:

> In affirming Kelsey's sentences, the majority opinion cites *Abrakata v. State,* 168 So.3d 251 (Fla. 1st DCA 2015), and *Lambert v. State,* 170 So.3d 74 (Fla. 1st DCA 2015), ***both of which are distinguishable: Neither involved a violation of Graham v. Florida, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010).*** In *Abrakata,* the juvenile defendant was convicted of attempted second-degree murder with a firearm (a first-degree felony), and sentenced to twenty-five years in prison with a twenty-five-year mandatory minimum. 168 So.3d at 251, 251 n. 1. On appeal to this court, Abrakata argued he was entitled "to a review of his sentence after 15 years under section 921.1402(2)(c), Florida Statutes." *Id.* at 251. This court rejected Abrakata's argument, reasoning, "absent a violation of *Graham,* there is no legal basis to retroactively apply section 921.1402 (or any other provision of the juvenile sentencing legislation enacted in 2014) to the 2011 offense in this case." *Id.* at 252. In the present case, Kelsey's initial sentence was plainly a violation of *Graham.*

Kelsey v. State, 183 So. 3d 439, 444 ftnt.5 (Fla. 1st DCA 2015), remanded No. SC15-2079, 2016 WL 7159099 (Fla. Dec. 8, 2016); Emphasis added.

Here, too, Graham is not triggered. Morris cannot show the district decision actually and expressly and directly conflicts with Peterson or Kelsey.

The State acknowledges that in Roman, pending before this Court in SC16-2148, the State recently responded to this Court's order to show cause "why in light of Kelsey v. State, 2016 WL 7159099 (Fla. Dec. 8, 2016), this Court should not exercise its jurisdiction in this case, summarily quash the decision being reviewed, and remand this case to the district court with instructions to further remand for resentencing…" (Appendix A, attached.) The State could not show such cause. The facts here, however, are different.

CONCLUSION

Based on the foregoing, the State asks this Court to decline to exercise jurisdiction.

CERTIFICATE OF SERVICE

I certify that the foregoing has been furnished to Terrence E. Kehoe; Special Assistant, Public Defender's Office, 10th Judicial Circuit; PO Box 9000--Drawer PD; Bartow, FL 33831; appealfilings@pd10.state.fl.us; tekehoelaw@aol.com; mjudino@pd10.state.fl.us by filing through the Florida Court's E-Filing Portal this 30th day of January, 2017.

CERTIFICATE OF COMPLIANCE

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

Respectfully submitted and certified,
PAMELA JO BONDI
ATTORNEY GENERAL

/s/ John Klawikofsy
JOHN KLAWIKOFSY
Chief-Assistant Attorney General
Bureau Chief, Tampa Criminal Appeals
Fla. Bar No. 930997

/s/ Wendy Buffington
By: WENDY BUFFINGTON
ASSISTANT ATTORNEY GENERAL
Fla. Bar No. 779921
Attorney for Respondent, State of Fla.
Office of the Attorney General
Concourse Center 4
3507 E. Frontage Road, Suite 200
Tampa, Florida 33607-7013
Primary E-Mail:
CrimAppTPA@myfloridalegal.com
Secondary E-Mail:
Wendy.Buffington@myfloridalegal.com
(813)287-7900; (813)281-5500 (FAX)

COUNSEL FOR RESPONDENT

AG#: L17-1-00013