IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v.

DAZARIAN C. LEWARS,

Respondent.

Case No. SC2017-1002

L.T.: 2D15-3471

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

JURISDICTIONAL BRIEF OF PETITIONER

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PRELIMINARY STATEMENT

Petitioner, the State of Florida, the Appellee in the District Court of Appeal (DCA) and the prosecuting authority in the trial court, will be referenced in this brief as Petitioner, the prosecution, or the State. Respondent, Dazarian C. Lewars, the Appellant in the DCA and the defendant in the trial court, will be referenced in this brief as Respondent or by proper name.

STATEMENT OF THE CASE AND FACTS

The pertinent history and facts are set out in the decision of the lower tribunal, attached in slip opinion form. It also can be found at 2017 WL 1969691 and 42 Fla. L. Weekly D1098b.

SUMMARY OF ARGUMENT

The decision of the Second District Court of Appeal in the instant case directly and expressly conflicts with the decisions of three other district courts of appeal as to whether a defendant is required to be physically present in a Florida Department of Corrections (DOC), or vendor, facility at the time of his release from his prison sentence in order to qualify for sentencing on an enumerated offense pursuant to the Prison Release Reoffender statute, § 775.082(9)(a)1., Florida Statutes. This Court should exercise its discretion and accept jurisdiction to resolve the conflict on this important issue.

ARGUMENT

WHETHER THE SECOND DISTRICT'S OPINION IN *LEWARS V. STATE*, -- SO. 3D – (FLA. 2D DCA MAY 12, 2017) IS IN EXPRESS AND DIRECT CONFLICT WITH THE FIRST DISTRICT'S DECISION IN *STATE V. WRIGHT*, 180 SO. 3D 1043 (FLA. 1ST DCA 2015), THE FOURTH DISTRICT'S DECISION IN *TAYLOR V. STATE*, 114 SO. 3D 355 (FLA. 4TH DCA 2013), AND THE FIFTH DISTRICT'S DECISION IN *LOUZON V. STATE*, 78 SO. 3D 678 (FLA. 5TH DCA 2012)?

Petitioner contends that this Court has jurisdiction pursuant to Fla. R. App. P. 9.030(a)(2)(A)(iv), which parallels Article V, §3(b)(3), Fla. Const. The 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."

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). *Accord Dept. of Health and Rehabilitative Services v. Nat'l Adoption Counseling Service, Inc.*, 498 So.2d 888, 889 (Fla. 1986) (rejected "inherent" or "implied" conflict; dismissed petition). Neither the record, nor a concurring opinion, nor a dissenting opinion can be used to establish jurisdiction. *Reaves; Jenkins v. State*, 385 So.2d 1356, 1359 (Fla. 1980) ("regardless of whether they are accompanied by a dissenting or concurring opinion"). Thus, conflict cannot be based upon "unelaborated per curiam denials of relief," *Stallworth v. Moore*, 827 So.2d 974 (Fla. 2002). In addition, it is the "conflict of decisions, not

conflict of opinions or reasons that supplies jurisdiction for review by certiorari." *Jenkins*, 385 So.2d at 1359.

In *Ansin v. Thurston*, 101 So. 2d 808, 810 (Fla. 1958), this Court explained:

> It was never intended that the district courts of appeal should be intermediate courts. The revision and modernization of the Florida judicial system at the appellate level was prompted by the great volume of cases reaching the Supreme Court and the consequent delay in the administration of justice. The new article embodies throughout its terms the idea of a Supreme Court which functions as a supervisory body in the judicial system for the State, exercising appellate power in certain specified areas essential to the settlement of issues of public importance and the preservation of uniformity of principle and practice, with review by the district courts in most instances being final and absolute.

Accordingly, the determination of conflict jurisdiction distills to whether one district court's decision reached a result opposite another district court concerning the same point of law. Here, the same point of law decided below is in "express and direct" conflict with *Louzon v. State*, 78 So.3d 678 (Fla. 5th DCA 2012), *Taylor v. State*, 114 So. 3d 355, 355 (Fla. 4th DCA 2013), and *State v. Wright*, 180 So. 3d 1043 (Fla. 1st DCA 2015).

In the instant case, on April 1, 2013, Respondent was sentenced to a two-year prison sentence in Lee County case number 09-CF-20276. *See* http://www.dc.state.fl.us; DOC# Y44737. The Florida Department of Corrections released Respondent from its custody on April 2, 2013, after serving the two-year prison sentence in 09-CF-20276, with credit for time served. *See*

http://www.dc.state.fl.us; DOC# Y44737. On May 30, 2013, Respondent committed the offenses which were the basis of the appeal below. Since less than two months had passed between Respondent's release from his prison sentence and committing an enumerated offense under § 775.082(9)(a)1., Florida Statutes, the trial court sentenced Respondent to a fifteen-year sentence, pursuant to the Prison Release Reoffender (PRR) statute.

The Second DCA held that the trial court committed reversible error because the plain language of the PRR statute requires that in order to be a qualifying sentence, a defendant must physically be present in a state correctional facility operated by the Department of Corrections (DOC) or a private vendor when he is being released by the DOC. Since Respondent was physically released from the county jail, which is operated by the Lee County Sheriff's Office, the DCA found that Respondent did not qualify to be sentenced as a PRR on the instant enumerated offenses. The Second DCA proclaimed, "We decline to adopt the reasoning of *Wright*, *Taylor*, and *Louzon* because, in concluding that the legislature intended to sentence those in Lewars's position as a PRR, they seem to have skipped the "plain language" step of the statutory-construction analysis. *Id*. at *4 (internal citation omitted). The court further held that the absurdity doctrine would not support the decision reached by the First, Fourth, and Fifth District Courts of Appeal. *Id*. at. *5.

In *Louzon v. State*, 78 So. 3d 678 (Fla. 5th DCA 2012), the trial judge imposed a prison sentence pursuant to the PRR statute. As with Petitioner, Louzon was sentenced to prison but he was not physically transferred to the Department of Corrections since he had 609 days of credit for jail time served and, thus, his sentence was found to have been fully served. "When Louzon was sentenced to imprisonment in May 2009, he was placed in the legal custody of the Department of Corrections. Because of the jail time credit, he was released by the Department of Corrections from its legal custody." *Id*. at 680.

On appeal, the Fifth District Court of Appeal rejected Louzon's argument that in order to qualify for PRR sentencing under § 775.082(9)(a), he must have been physically present at, and then released from, a DOC facility. The court explained,

> To accept Louzon's argument would place form over substance and would be inconsistent with the Legislature's clear intent to provide for a greater sentence for individuals who commit a qualifying offense within three years of completion of a previously imposed prison sentence. To accept Louzon's argument would also mean that in order for the State to ensure that a defendant in Louzon's situation was eligible for subsequent PRR sentencing, it would have to physically transfer an individual from jail to a Department of Corrections facility—where the individual would then be entitled to an immediate release. Courts should not construe a statute so as to achieve an absurd result. *See Kasischke v. State*, 991 So.2d 803, 813 (Fla.2008); *Childers v. Cape Canaveral Hosp., Inc.*, 898 So.2d 973, 975 (Fla. 5th DCA 2005).

The court cited to an earlier opinion, *Cassista v. State,* 57 So. 3d 265, 267 n. 1 (Fla. 5th DCA 2011), which reasoned that "If [an] offender's state prison sentence expires while he or she is temporarily residing in a hospital or county jail, we would have no difficulty in concluding that the offender was constructively in a state prison facility when his sentence expired for PRR purposes." *Louzon,* 78 So. 3d at 680-81.

The Fourth District Court of Appeal, in *Taylor v. State,* 114 So. 3d 355 (Fla. 4th DCA 2013), agreed with the Fifth DCA and held that the PRR statute applied to those defendants whose qualifying prison sentence expires while being housed in the county jail. ("As to appellant's PRR sentence, we affirm based upon *Louzon v. State,* 78 So.3d 678 (Fla. 5th DCA 2012), the reasoning of which we adopt").

The First District Court of Appeal, in *State v. Wright,* 180 So. 3d 1043 (Fla. 1st DCA 2015), agreed with the Fifth and Fourth DCAs that "Appellant's release from custody constituted a constructive release from the Department of Corrections and a state correctional facility for purposes of section 775.082(9)(a) 1." *Id.* at 1045. The court noted that it saw "nothing in the PRR statute to indicate that the Legislature intended for a defendant in this situation to avoid PRR status in the future." *Id.* at 1046. The court specifically declined to hold "that Appellant, who committed a PRR-qualifying offense, who was committed to the Department's custody, and whose release facility was listed as the central office, could not be

considered a PRR simply by virtue of the fact that he was sentenced to time served and physically walked out of a county jail." *Id*. at 1045-46.

Thus, in interpreting the same statute subsection, the Second District arrived at diametrically opposed conclusions to the First, Fourth, and Fifth District Courts of Appeal on the exact same point of law. Direct, express, and irreconcilable conflict thus exists between the decisions of the Court in the instant case and those of the First, Fourth, and Fifth District Courts of Appeal. This conflict is one which can only be resolved by this Court. Moreover, the issue involved in this case is one which has significant equal protection implications and is likely to arise often in sentencing, as evidenced by the four recent appellate decisions written within a comparatively short time span since *Cassista v. State,* 57 So. 3d 265 (Fla. 5th DCA 2011) was decided in 2011.

Permitting the conflict between decisions to stand in this case would create equal protection implications for defendants sentenced in different jurisdictions whose qualification for PRR would be based solely on where the last day of the prison sentence was served. It is unlikely that such an arbitrary factor would survive an equal protection challenge. Furthermore, legislative intent would not be served in the Second DCA's jurisdiction for those defendants who are resentenced (including all juvenile offenders currently being resentenced based on the *Graham*, *Miller*, and their progeny), defendants who receive time-served prison sentences

following a violation of probation on a split sentence, prisoners who are serving the remainder of their sentence in a county facility, another jurisdiction, or a medical facility, and others who [deliberately] prolong their cases to prevent being physically transferred to DOC, etc.

Finally, in its opinion in this case, the Second DCA did "certify conflict with the First District's decision in *Wright*, the Fourth District's decision in *Taylor*, and the Fifth District's decision in *Louzon*." *Id*. at *6. As such, there is express and direct conflict, and this Court should exercise its jurisdiction and accept this case for review.

CONCLUSION

Based on the foregoing argument, the State respectfully requests this Honorable Court accept jurisdiction.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing will be furnished via eservice to Brian Lydic, Special Assistant Public Defender, P.O. Box 9000- Drawer PD, Bartow, FL, 33831; SAPD@pd10.org; appealfilings@pd10.org, this 1st day of June 2017.

CERTIFICATE OF COMPLIANCE

I certify that this brief was computer generated using Times New Roman 14-point font.

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