

IN THE SUPREME COURT OF THE STATE OF FLORIDA

DEORICK ELLIS,

Petitioner,

v.

CASE NO. SC03-1766

5DCA CASE NO. 5D03-1334

STATE OF FLORIDA,

Respondent.

_____ /

ON DISCRETIONARY REVIEW FROM THE
FIFTH DISTRICT COURT OF APPEAL

JURISDICTIONAL BRIEF OF RESPONDENT

CHARLES J. CRIST, JR.
ATTORNEY GENERAL

KELLIE A. NIELAN
BUREAU CHIEF

BONNIE JEAN PARRISH
ASSISTANT ATTORNEY GENERAL
Fla. Bar #768870
444 Seabreeze Boulevard, 5th Floor
Daytona Beach, FL 32118
(386) 238-4990
Fax (386)238-4997

COUNSEL FOR RESPONDENT

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STATEMENT OF CASE AND FACTS

Respondent rejects Ellis's statement of the case and facts. As this court held in *Reaves v. State*, 485 So. 2d 829, 830 n.3 (Fla. 1986), "[t]he only facts relevant to our decision to accept or reject such petitions are those facts contained within the four corners of the decisions allegedly in conflict." Ellis's statement of the case and facts contains not only facts not contained within the decision of the Fifth District Court of Appeal, but also contains argument. This is improper.

Respondent provides the following:

On July 18, 2003, the Fifth District Court of Appeal issued a decision in *Ellis v. State*, 853 So. 2d 484 (Fla. 5th DCA 2003), stating the following:

Ellis appeals from the trial court's summary denial of his motion filed pursuant to Florida Rule of Criminal Procedure 3.800(a). In this proceeding, Ellis asserts the trial court improperly departed from the guidelines without written reasons. We affirm.

This motion is successive and violates the law of the case doctrine. In a prior motion filed pursuant to Florida Rule of Criminal Procedure 3.800(a), Ellis raised the very same issue, appealed the trial court's summary denial, and this court affirmed. *See State v. McBride*, 28 Fla. L. Weekly S401, 848 So. 2d 287, (Fla. May 15, 2003); *Smith v. State*, 685 So. 2d 912 (Fla. 5th DCA 1996).

We caution Ellis against filing additional successive and improper motions. Enough is enough. *See Isley v. State*, 652 So. 2d 409 (Fla. 5th DCA 1995). *See also*

Thomas v. State, 824 So. 2d 1061 (Fla. 5th DCA 2002).

Ellis, supra.

SUMMARY OF ARGUMENT

This court lacks jurisdiction to review this case, as the Fifth District's decision does not expressly and directly conflict with a decision of this court or another district court. This court must decline to accept jurisdiction.

ARGUMENT

THIS COURT LACKS JURISDICTION TO REVIEW THIS CASE, AS THE FIFTH DISTRICT'S DECISION DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH A DECISION OF THIS COURT OR ANOTHER DISTRICT COURT.

Ellis has filed two jurisdictional briefs with this court. On March 2, 2004, this court accepted the October 20, 2003, brief as timely filed. Ellis filed a second jurisdictional brief on or about November 26, 2003. There is currently a motion to amend pending before this court. In an abundance of caution, Respondent will address both briefs. In his October 20, 2003 brief, Ellis claims the decision in *Ellis v. State*, 853 So. 2d 484 (Fla. 5th DCA 2003), conflicts with *Fiore v. White*, 121 S.Ct. 712 (2001). In the November 26, 2003, brief, Ellis claims conflict with *Hunt v. State*, 613 So. 2d 893 (Fla. 1992). Respondent asserts that there is no conflict with either case and this court is without jurisdiction.

In *Ellis, supra*, the Fifth District did not address the merits of Ellis's sentencing issue. The Fifth District did not certify conflict with a decision from this court or another district court. In his October 20, 2003, jurisdictional brief Ellis claims conflict not with this Court or another district court, but with a decision out of the United States Supreme Court, *Fiore v. White*, 121 S.Ct. 712 (2001). This does not establish jurisdiction. Fla.R.App.P. 9.030(a)(2)(A)(iv).

In his November 26, 2003, jurisdictional brief, Ellis claims conflict with this court's decision in *Hunt v. State*, 613 So. 2d 893 (Fla. 1992). The *Hunt* decision concerns the enforcement of a plea agreement. The decision in *Ellis* was the result of an appeal from the denial of a Florida Rule of Criminal Procedure 3.800 motion and did not address the merits of Ellis's claims. Rather, the court found that his rule 3.800(a) motion was successive and violated the law of the case doctrine, as the identical issue had been previously raised and rejected. *Ellis, supra*. There is no express and direct conflict between the Fifth District's decision in *Ellis* and this court's decision in *Hunt*.

There is no express and direct conflict. This court should decline to accept jurisdiction.

CONCLUSION

Based on the arguments and authorities presented herein, Respondent asserts that there is no express and direct conflict and this court must decline to accept jurisdiction in this case.

Respectfully submitted,

CHARLES J. CRIST, JR.
ATTORNEY GENERAL

KELLIE A. NIELAN
BUREAU CHIEF
Fla. Bar #618550

BONNIE JEAN PARRISH
ASSISTANT ATTORNEY GENERAL
Fla. Bar #768870
444 Seabreeze Blvd.
Fifth Floor
Daytona Beach, FL 32118
(386) 238-4990
FAX(386)238-4997

COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Jurisdictional Brief of Respondent has been furnished by U.S. Mail to Deorick Ellis, #A339044, Baker Correctional Institution, P.O. Box 500, Bunk#B1106, Sanderson, Florida 32087, this ____ day of March, 2004.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the font used in this brief is 14-point, Times New Roman.

Bonnie Jean Parrish