

IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. _____

JOHN THURSTON,

Petitioner,

- versus -

STATE OF FLORIDA,

Respondent.

RESPONDENT'S BRIEF ON JURISDICTION

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Preliminary Statement

Petitioner was the Defendant and Respondent was the Prosecution in the Criminal Division of the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida. Petitioner was Appellant and Respondent was Appellee in the District Court of Appeal of Florida, Fourth District. In this brief, the parties shall be referred to as they appear before this Honorable Court except that Respondent may also be referred to as the State.

A copy of the opinion issued by the Fourth District Court of Appeal is attached as Appendix A.

Statement Of The Case And Facts

Noting that in determining jurisdiction, this Court is limited to the facts apparent on the face of the opinion, Hardee v. State, 534 So. 2d 706, 708 n.1 (Fla. 1988), and Reaves v. State, 485 So. 2d 829 (Fla. 1986), Respondent will set out the facts as they appear in the opinion below:

Petitioner filed a motion pursuant to Fla. R. Crim. P. 3.850 in the trial court. The motion was denied, and that denial was affirmed by the Fourth District Court of Appeal. Thurston v. State, 2003 Fla. App. LEXIS 13820 (Fla. 4th DCA 2003) (Appendix A). The opinion was issued on September 3, 2003. On October 20, 2003, the Fourth District issued the mandate in this case.

Summary Of The Argument

This Court does not have jurisdiction to review the instant case. Petitioner failed to file a timely notice to invoke this Court's jurisdiction. Even assuming Petitioner's notice was timely, the decision of the Fourth District Court of Appeal in the instant case does not expressly and directly conflict with the decisions of this Court in Espindola v. State, 28 Fla. L. Weekly D 222 (Fla. 3d DCA 2003) . Therefore, this Court may not review the case at bar and should dismiss the Petitioner's case.

Argument

THIS MATTER SHOULD BE DISMISSED WHERE PETITIONER FAILED TO FILE A TIMELY NOTICE TO INVOKE THIS COURT'S JURISDICTION.

Petitioner alleges that the Fourth District Court of Appeal's decision in the present case expressly and directly conflicts with the decision of the Third District Court of Appeal in Espindola v. State, 28 Fla. L. Weekly D 222 (Fla. 3d DCA 2003). This Court need not even reach that issue where Petitioner's notice invoke this Court's discretionary jurisdiction was not timely filed.

A notice to invoke the discretionary jurisdiction of this Court must be filed with the clerk of the district court of appeal within 30 days of the date of the rendition of the order to be reviewed. Fla. R. App. P. 9.120(b). The opinion of the Fourth District was issued on September 3, 2003. Petitioner's notice, dated October 08, 2003, was filed beyond the thirty-day time period.

The date of rendition, and thus the jurisdictional time limit for initiating review, may be extended by the filing of certain motions in the lower tribunal after entry of the order to be reviewed. Fla. R. App. P. 9.020(h). The rule includes a motion for rehearing as a motion the will extend rendition of an order. However, a motion for rehearing will suspend rendition of the final order **only** if it is timely. Casto v. Casto, 404 So. 2d 1046 (Fla. 1981).

In the case at bar, Petitioner did not file any timely motion that would extend rendition of the opinion of the Fourth District. Therefore, Petitioner's notice to invoke

this Court's discretionary jurisdiction was not timely and this case should be dismissed.

Even assuming, arguendo, that Petitioner filed his notice in a timely manner, the opinion of the Fourth DCA does not expressly and directly conflict with this Court's opinions in Espindola v. State, 28 Fla. L. Weekly D 222 (Fla. 3d DCA 2003).

Article V, § 3(b)(3) of the Florida Constitution restricts this Court's review of a district court of appeal's decision only if it expressly conflicts with a decision of this Court or of another district court of appeal. It is not enough to show that the district court's decision is effectively in conflict with other appellate decisions. The term "expressly" requires some written representation or expression of the legal grounds supporting the decision under review. See Jenkins v. State, 385 So. 2d 1356 (Fla. 1980). A decision of a district court of appeal is no longer reviewable on the ground that an examination of the record would show that it is in conflict with another appellate decision; it is reviewable if the conflict can be demonstrated from the district court of appeal's opinion itself. The district court of appeal must at least address the legal principles which were applied as a basis for the decision. See Ford Motor Co. v. Kikis, 401 So. 2d 1341, 1342 (Fla. 1981).

When determining whether conflict jurisdiction exists, this Court is limited to the facts which appear on the face of the opinion. Hardee v. State, 534 So. 2d at 708, n.1; White Constr. Co. v. Dupont, 455 So. 2d 1026 (Fla. 1984). In the past, this Court has held that it would not exercise its discretion where the opinion below established no point of law contrary to the decision of this Court or of another district court of

appeal. The Florida Star v. B.J.F., 530 So. 2d 286, 289 (Fla. 1988). "Conflict between decisions must be express and direct, i.e., it must appear within the four corners of the majority decision.' In other words, inherent or so called 'implied' conflict may no longer serve as a basis for this Court's jurisdiction." State, Department of Health v. National Adoption Counseling Service, Inc., 498 So. 2d 888, 889 (Fla. 1986) (quoting Reaves v. State, 485 So. 2d 829, 830 (Fla. 1986)). See also School Board of Pinellas County v. District Court of Appeal, 467 So. 2d 985, 986 (Fla. 1985).

In the case at bar, the Fourth District denied him relief. First and foremost, this Court is restricted to the facts apparent on the face of the Fourth District's opinion, Hardee v. State, 534 So. 2d 706, 708 n.1 (Fla. 1988), and Reaves v. State, 485 So. 2d 829 (Fla. 1986). It is impossible to tell from the opinion exactly what Petitioner alleged in his motion or why the Fourth District found those allegations insufficient. Therefore, it is impossible to determine whether conflict exists based on the same set of facts.

Conclusion

WHEREFORE, based on the foregoing argument and authorities, Respondent respectfully submits that this Court should dismiss this proceeding as untimely.

Respectfully submitted,

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Certificate Of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to John Thurston, DC# W03764, Florida State Prison, 7819N.W. 228th Street, Raiford, Florida, 32026, this ____ day of November, 2003.

CLAUDINE M. LaFRANCE
Assistant Attorney General

Certificate Of Type Size And Style

In accordance with Fla. R. App. P. 9.210(a)(2), Appellee hereby certifies that the instant brief has been prepared with Times New Roman 14 point font.

CLAUDINE M. LaFRANCE
Assistant Attorney General

APPENDIX A