

IN THE SUPREME COURT OF FLORIDA

RICKEY DAN CRONE,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

CASE NO. SC03-215

JURISDICTIONAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE AND FACTS

The state rejects petitioner's statement of the case and facts entirely because it contains improper allegations concerning matters outside the four corners of the decision below. The pertinent history and facts are set out in the decision below, a copy of which is included in the appendix and which can also be found at Crone v. State, 28 Fla. L. Weekly D260 (Fla. 1st DCA 17 January 2003). The pertinent facts are as follows.

The district court affirmed without comment the trial court order denying two postconviction claims on which an evidentiary hearing was held.

The district court determined, as conceded by the state, that the trial court order summarily denying two other facially sufficient claims did not conclusively show that no relief was appropriate. Accordingly, the district court reversed and remanded on those two claims for the trial court to either conduct an evidentiary hearing or to attach portions of the trial court record conclusively showing that no relief was appropriate. SUMMARY OF ARGUMENT

Petitioner has improperly relied upon the record in the trial court and argued the merits of issues which are not before this Court for the purposes of determining whether discretionary jurisdiction exists. He has not shown direct and express conflict between the decision below and decisions of this Court or of other district courts.

ARGUMENT

ISSUE

HAS THE PETITIONER SHOWN THAT THERE IS DIRECT
AND EXPRESS CONFLICT BETWEEN THE DECISION BELOW
AND DECISIONS OF THIS COURT OR OF OTHER
DISTRICT COURTS? (Restated)

Applicable Appellate Standard of Review and Jurisdictional

Criteria

The standard of review is **de novo** subject to the following jurisdictional criteria.

Petitioner contends that this Court has jurisdiction pursuant to 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, supra; Jenkins v. State, 385 So.2d 1356, 1359 (Fla. 1980)("regardless of whether they are accompanied by a

dissenting or concurring opinion"). 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.

Petitioner's argument is on the merits, not jurisdiction, and is permeated with allegations and claims which are outside the four corners of the decision below. He has failed entirely to show direct and express conflict between the routine decision of the district court to affirm some issues without comment and to remand two others for proceedings pursuant to Florida Rules of Criminal Procedure 3.850.

CONCLUSION

There is no constitutional basis for discretionary review. The petition should be denied

SIGNATURE OF ATTORNEY AND CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to Rickey D. Crone, North Florida Reception Center, P.O. Box 628, Lake Butler, Florida 32054-0628 on 18 February 2003.

Respectfully submitted and served,

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[AGO# L03-1-5975]

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the font requirements of Fla. R. App. P. 9.210.

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Attorney for State of Florida

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