

IN THE SUPREME COURT OF THE STATE OF FLORIDA

MICHAEL JOSEPH STRAUSS,

Petitioner,

5th DCA Case No. 5D02-1306

v.

Supreme Court Case No. SC03-634

STATE OF FLORIDA,

Respondent.

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ON DISCRETIONARY REVIEW OF THE  
DISTRICT COURT OF APPEAL,  
FIFTH DISTRICT

JURISDICTIONAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE AND FACTS

The only facts relevant to this Court in determining whether to accept jurisdiction are those contained within the opinion of the Fifth District Court of Appeal in Strauss v. State, 836 So. 2d 1096 (Fla. 5<sup>th</sup> DCA 2003). Respondent, therefore, offers the following as a substitute for Petitioner's statement of the case and facts.

The Fifth District Court's opinion in Strauss states:

Appellant, Michael Joseph Strauss, appeals the denial of his motion for post-conviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850. His motion included eighteen separate grounds, with subclaims. The trial court conducted a hearing on certain of these claims and the others were denied without a hearing. All claims were denied by the trial court in a detailed and thorough order. We have made a painstaking review of all eighteen claims and find no reversible error.

Strauss v. State, 836 So. 2d 1096 (Fla. 5<sup>th</sup> DCA 2003).

Petitioner filed a motion for rehearing which was denied by the Fifth District Court of Appeal. Petitioner now seeks discretionary review.

### SUMMARY OF ARGUMENT

The Court is limited to the facts contained within the four corners of the decision in determining whether an express and direct conflict exists. On the face of the decision in Strauss v. State, there is no express and direct conflict with a decision of this Court or another district court of appeal. Thus, this Court should decline to accept jurisdiction in this case.

ARGUMENT

THIS COURT SHOULD DECLINE TO ACCEPT JURISDICTION IN THE INSTANT CASE BECAUSE ON THE FACE OF THE DECISION IN STRAUSS V. STATE, INFRA, THERE IS NO EXPRESS AND DIRECT CONFLICT WITH A DECISION OF THIS COURT OR ANOTHER DISTRICT COURT OF APPEAL.

Petitioner seeks discretionary review with this Honorable Court under article V, section 3(b)(3) of the Florida Constitution. See also Fla. R. App. P. 9.030(a)(2)(A)(iv). Article V, section 3(b)(3) provides that the Florida Supreme Court may review a district court of appeal decision only if it "expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law." Nevertheless, Appellant argues that pursuant to this Court's holding in Florida Star v. B.J.F., 530 So. 2d 286 (Fla. 1988), this Court has jurisdiction to review a decision of a district court of appeal when the district court's decision does not expressly and directly conflict with a decision of another district court of appeal or of the supreme court on the same question of law.

In B.J.F., this Court explained that in the broadest sense, this Court has subject-matter jurisdiction under article V, section 3(b)(3) of the Florida Constitution, "over any decision of a district court that expressly addresses a question of law within the four corners of the opinion itself." B.J.F., 530 So. 2d at 288. However, this Court's discretion to exercise its jurisdiction is more narrowly circumscribed. Id. at 288.

Pursuant to article V, section 3(b)(3) of the Florida Constitution, this Court may only exercise its discretion to review a decision of the district court of appeal when the decision "expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law." Thus, this Court, in operating within the intent of the constitution's framers, has refused to exercise its jurisdictional discretion "where the opinion below establishes no point of law contrary to a decision of this Court or another district court."

In this case, Petitioner has not established that the decision of the Fifth District Court of Appeal in Strauss v. State, 836 So. 2d 1096 (Fla. 5<sup>th</sup> DCA 2003), is in direct conflict with decisions rendered by this Court or other district courts of appeal. Instead, Petitioner argues that he was denied his constitutional right against double jeopardy, was never convicted of any underlying felony, was denied his constitutional right to a fair trial and competent counsel, and that the trial judge failed to file a certification of competence.

In all of the issues raised by Petitioner in the instant jurisdictional brief, Petitioner merely reargues the facts of his case. Additionally, Petitioner argues facts that are not contained in the four corners of the Fifth District's opinion.

Pursuant to the Committee Notes of Florida Rule of Appellate

Procedure 9.120, "[t]he jurisdictional brief should be a short, concise statement of the grounds for invoking jurisdiction and the necessary facts. It is not appropriate to argue the merits of the substantive issues involved in the case or discuss any matters not relevant to the threshold jurisdictional issue." Moreover, in Reaves v. State, 485 So. 2d 829 (Fla. 1986), this Court stated that "[c]onflict between decisions must be express and direct, i.e., it must appear within the four corners of the majority decision. Neither a dissenting opinion nor the record itself can be used to establish jurisdiction." Reaves, 485 So. 2d at 830.

Thus, based on the foregoing, this Court should not accept jurisdiction in the instant case.

CONCLUSION

Based on the arguments and authorities presented herein, Respondent respectfully requests that this Honorable Court decline to accept jurisdiction in this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Jurisdictional Brief of Respondent has been delivered, via U.S. mail, to MICHAEL JOSEPH STRAUSS, DC # V03536, Okeechobee Correctional Institution, 3420 N.E. 168<sup>th</sup> Street, Okeechobee, Florida 34972 this \_\_\_\_ day of August 2003.

CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that this brief was typed in 12 point Courier New.

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COUNSEL FOR RESPONDENT  
IN THE SUPREME COURT OF THE STATE OF FLORIDA

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APPENDIX