

IN THE SUPREME COURT OF FLORIDA

**JERRY LAYNE ROGERS,**

Petitioner,

v.

**STATE OF FLORIDA,**

Respondent.

**Case No. SC04-1018**

ON DISCRETIONARY REVIEW FROM  
THE FIFTH DISTRICT COURT OF APPEAL

**JURISDICTIONAL BRIEF OF RESPONDENT**

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**STATEMENT OF THE CASE AND FACTS**

Petitioner was originally convicted of first-degree murder and sentenced to death. However, his conviction and sentence were reversed by this Court in **Rogers v. State**, 782 So. 2d 373 (Fla. 2001).

Petitioner was again tried and convicted of first degree murder. He was then sentenced to life with a 25-year minimum mandatory term, to be served consecutively to the sentences he was already serving.

Petitioner's conviction and sentence were affirmed by the Fifth District Court of Appeal in **Rogers v. State**, 872 So. 2d 421 (Fla. 5th DCA 2004). It is this decision which Petitioner now seeks to have this Court review.

**SUMMARY OF THE ARGUMENT**

This Court is without jurisdiction to entertain this appeal. The decision of the Fifth District Court of Appeal does not expressly and directly conflict with this Court's prior decision in this case which reversed Petitioner's original conviction and sentence.

**ARGUMENT**

**ISSUE**

**THIS COURT IS WITHOUT JURISDICTION TO ENTERTAIN THE INSTANT APPEAL.**

**Art. V. §3(b)(3), Fla. Const. and Fla. R. App. P. 9.030**

**(2)(A)(iv)** provide that this Court has jurisdiction to review a decision of a district court of appeal which announces a rule of law which expressly and directly conflicts with a decision of this Court on the same question of law.

Jurisdiction founded on "express and direct conflict" does not require that the district court certify or even directly recognize the conflict. The "express and direct" requirement is met if it can be shown that the holding of the district court is in conflict with another district court or the supreme court. See Hardee v. State, 534 So. 2d 706 (Fla. 1988); Ford Motor Co. v. Kikis, 401 So. 2d 1341 (Fla. 1981)(District court's discussion of the legal principles which the court applied supplies a sufficient basis for a petition for conflict review), on remand, 405 So. 2d 1061 (Fla. 5th DCA 1981).

Petitioner asserts that the decision rendered by the Fifth District Court of Appeal in the instant case expressly and directly conflicts with this Court's earlier opinion in this case which reversed Petitioner's original conviction and death sentence. However, Petitioner then goes on to simply

reargue the *merits* of the issues raised in his direct appeal.

"The 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."

**Fla. R. App. P. 9.120 Committee Notes.** Petitioner's so-called jurisdictional brief flies in the face of this mandate, as it consists entirely and exclusively of reargument of the merits of the issue raised on direct appeal.

Petitioner's position apparently rests upon a misunderstanding of the definition of "express and direct conflict." It is a conflict of decisions, not a conflict of opinions or reasons, that supplies jurisdiction for review by this Court. See Gibson v. Maloney, 231 So. 2d 823, 824 (Fla. 1970).

In Reaves v. State, 485 So. 2d 829, 830 (Fla. 1986), this Court reemphasized its prior holding in Jenkins v. State, 385 So. 2d 1356 (Fla. 1980), that "[c]onflict between decisions must be express and direct, i.e., it must appear within the four corners of the majority decision." There, the majority of the district court had held an admission by a criminal defendant to be voluntary, and thus admissible for impeachment purposes, even though Miranda rights had been violated. The

dissenting judge had reviewed the record and concluded that the statements were involuntary. In deciding whether it had jurisdiction, the supreme court noted that to find a conflict with the prior cited decision, it

would be necessary for us either to accept the dissenter's view of the evidence and his conclusion that the statements were involuntary, or to review the record itself in order to resolve the disagreement in favor of the dissenter. Neither course of action is available under the jurisdiction granted by article V, section 3(b)(3) of the Florida Constitution.

In a footnote, the supreme court offered an important instruction to the petitioner's counsel regarding the preparation of jurisdictional briefs:

The 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 . . . . [W]e are not permitted to base our conflict jurisdiction on a review of the record or on facts recited only in dissenting opinions. Thus, it is pointless and misleading to include a comprehensive recitation of facts not appearing in the decision below, with citations to the record . . . .

**Reaves**, 485 So. 2d at 830 n. 3.

Petitioner's so-called jurisdictional brief runs far afoul of **Reaves** in that it contains a plethora of facts drawn from the record not contained in the four corners of the Fifth District's opinion. Petitioner has merely improperly reargued the merits of the issues raised below and has failed to

demonstrate how the decision of the Fifth District Court of Appeal in the instant case expressly and directly conflicts with any decision of this Court. As such, this Court is without jurisdiction to consider the instant appeal, and this Court should decline to accept review.

**CONCLUSION**

WHEREFORE, Respondent moves this Court to deny review of the opinion of the Fifth District Court of Appeal in this case, as it is without jurisdiction to do so.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. mail to Jerrel E. Phillips, Esquire, Post Office Box 14463, Tallahassee, FL 32317-4463, and Timothy C. Hester and John H. Fuson, Covington & Burlington, 1201 Pennsylvania Avenue, N.W., Washington, DC 20004-2401 on this \_\_ day of June, 2004.

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**COUNSEL FOR RESPONDENT**

**CERTIFICATE OF FONT COMPLIANCE**

I HEREBY CERTIFY that the size and style of type used in this brief is 12-point Courier New, in compliance with Fla. R. App. P. 9.210(a)(2).

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