

IN THE SUPREME COURT OF FLORIDA

TYRONE OSBORNE

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Case No. SC05-1011

ON PETITION FOR REVIEW FROM
THE FOURTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA

JURISDICTIONAL BRIEF OF RESPONDENT

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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 Seventeenth Judicial Circuit, in and for Broward County, Florida. Petitioner was the Petitioner and Respondent was the Respondent in the Fourth District Court of Appeal. 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.

STATEMENT OF THE CASE AND FACTS

Respondent generally accepts Petitioner's Statement of the Case, although these facts were not set out in the district court's order. Respondent does not accept Petitioner's assertion that the 3.800(a) motion was delivered to prison officials, for this was not a fact determined by the court.

SUMMARY OF THE ARGUMENT

The Florida Supreme Court lacks jurisdiction to review a per curiam dismissal of relief on an extraordinary writ petition that was issued without opinion.

ARGUMENT

THE SUPREME COURT OF FLORIDA LACKS JURISDICTION TO REVIEW THE PER CURIAM DISMISSAL WITHOUT OPINION OF THE PETITION FOR WRIT OF MANDAMUS.

In this case, the Fourth District dismissed Petitioner's petition for writ of mandamus because there was no motion to correct sentence filed in the trial court. No opinion on the merits of the motion, whether or not the trial court should be compelled to rule on the motion, was given. This court has declared that it is without jurisdiction to review per curiam denials of relief on extraordinary writ petitions. See Stallworth v. Moore, 827 So. 2d 974, 978 (Fla. 2002).

Petitioner maintains that the Fourth incorrectly dismissed the petition for writ of mandamus because he gave the motion to prison officials for filing. However, no determination has been made on whether a motion was so delivered. This is because the mail-box rule applies to the timeliness of a filing, not to the fact of it. The Fourth District dismissed the petition because the trial court did not have any motion on which to rule, so that it could not compel the trial court to make a ruling.

CONCLUSION

Respondent respectfully requests that this Honorable Court deny the petition for review.

MELYNDA L. MELEAR
Counsel for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Tyrone Osborne, DC #672669, J-1202-S, Florida State Prison, 7819 N.W. 228th Street, Raiford, FL 32026-1190, this 12th day of September, 2005.

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).

Respectfully submitted,

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