IN THE SUPREME COURT OF FLORIDA

CASE NO. SCO5-1214
L.T. CASE NO. 4D05-1810

BILLY MARTINEZ,
Petitioner

vs.

STATE OF FLORIDA,
Respondent

RESPONDENT'S BRIEF ON JURISDICTION

ON DISCRETIONARY REVIEW FROM THE
FOURTH DISTRICT COURT OF APPEAL

CHARLES J. CRIST, JR.
ATTORNEY GENERAL
Tallahassee, Florida
CELIA TERENZIO
BUREAU CHIEF, West Palm Beach
Florida Bar Number: 0656879
DIANE F. MEDLEY
Assistant Attorney General
Florida Bar Number: 88102
1515 North Flagler Drive, 9th Floor
West Palm Beach, Florida 33401
561-837-5000

Counsel for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases Cited

Statutes Cited

STATEMENT OF THE CASE AND FACTS

Petitioner Billy Martinez appealed the trial court's summary denial of his postconviction relief motion, which he filed pursuant to Florida Rule of Criminal Procedure 3.850. The Fourth District Court of Appeal affirmed the trial court based upon two reasons: 1) petitioner's motion was filed more than two years after his conviction became final and did not raise any valid exception to the time requirements; 2) the "shotgun" notice provided by the state, that it intended to seek enhanced penalties pursuant to section 775.084, Florida Statutes, was adequate as to notification of classification and penalties to which petitioner would be subject to upon conviction. Martinez v. State, 904 So. 2d 565 (Fla. 4th DCA 2005).

Petitioner filed a Notice to Invoke Discretionary Jurisdiction in this Court on July 7, 2005.

SUMMARY OF THE ARGUMENT

The Third District Court of Appeal decision relied upon by petitioner is not in direct and express conflict with the Fourth District Court of Appeal opinion issued in petitioner's case. The opinions do not reveal enough facts so as to determine direct and express conflict. Neither opinion set forth the actual notice received, so it is impossible to determine the similarities and

dissimilarities between the notices. While both cases involve the issue of whether notice was adequate, the few facts disclosed indicate that a different outcome could be required in each case. Moreover, the Third District has distinguished the case relied upon by petitioner, has found notice adequate in cases similar to that of petitioner, and has cited with approval the legal authority relied upon by the Fourth District when it decided petitioner's case.

JURISDICTIONAL STATEMENT

Petitioner can invoke this Court's discretionary jurisdiction only by showing that the district court decision expressly and directly conflicts with a decision from this Court or from another Florida district court on the same question of law. Fla. R. App. P. 9.030(a)(2)(A)(iv). There is no such conflict here.

ARGUMENT

THERE IS NO DISCRETIONARY REVIEW AVAILABLE, AS THIS DECISION DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH STATE V. BELL ON THE SAME QUESTION OF LAW.

Petitioner argues that the decision in his case, Martinez v. State, 904 So. 2d 565 (Fla. 4th DCA 2005), expressly and directly conflicts with the

decision of another district court, State v. Bell, 747 So. 2d 1028 (Fla. 3d DCA 1999).

To invoke this Court's discretionary jurisdiction, there must be express and direct conflict, on the same point of law, appearing "within the four corners of the majority decision." Reaves v. State, 485 So. 2d 829, 830 (Fla. 1986). The only relevant facts are "those facts contained within the four corners of the decisions allegedly in conflict." *Id*. This is so because this Court's powers "to review decisions of the district courts of appeal are limited and strictly prescribed." Jenkins v. State, 385 So. 2d 1356, 1357 (Fla. 1980). This Court has explained that district courts were never intended to be intermediate courts; rather, this Court 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." *Id*. at 1357-1358.

Petitioner argues that the opinions at issue here conflict because in Martinez the "shotgun" notice given pursuant to section 775.084, Florida Statutes, was deemed adequate, while the "general" notice in Bell was deemed inadequate.

First, there must be express and direct conflict, on the same point of law, appearing within the four corners of the opinions at issue. Here no such conflict appears because nothing on the faces of these opinions shows that the notices were so similar to each other as to require the same result in each case. *See* Dep't of Revenue v. Johnston, 442 So. 2d 950 (Fla. 1983) (discharging jurisdiction "[b]ecause we find this cause distinguishable on its facts from those cited in conflict."); Jones v. City of Tallahassee, 333 So. 2d 21, 21 (Fla. 1976) (no conflict jurisdiction where facts in cases cited as being in conflict were distinguishable from facts in instant case).

In Martinez, the Fourth District simply stated that petitioner received a "shotgun" notice that the state would be seeking enhanced penalties pursuant to section 775.084, Florida Statutes. Martinez, 904 So. 2d at 565. While the court found that petitioner received "adequate notice of the classification and penalty he would be subject to upon conviction," it did not indicate what subsections of the statute the state listed in its notice. *Id*. Contrary, in Bell the Third District stated that the notice given was a "general" one seeking enhancement under the statute. Bell, 747 So. 2d at 1029. While it could be inferred that the state had simply cited to the entire statute without indicating any particular subsections, the exact notice is unknown. The opinions did not quote the actual notices utilized, so no

determination can be made as to how similar or dissimilar the notices were to each other.

The two cases are factually dissimilar in other ways so as to require different outcomes as to the notice issue, and without there being conflict between the two opinions. For example, in Bell the Third District indicated that its decision rested in large part on the fact that the state sought to have the defendant designated as a violent career criminal—the severest category possible—but provided the defendant with only the general notice; the state then sought this harshest penalty after the defendant had entered into a guilty plea. Bell, 747 So. 2d at 1029. In Martinez the Fourth District deemed the notice adequate "of the classification and penalty [petitioner] would be subject to upon conviction," but did not disclose what category of enhancement the state sought, whether petitioner took a plea or received a jury trial, or at what point petitioner received his notice. Martinez, 904 So. 2d at 566. While there cannot be a factual comparison between Martinez and Bell so as to determine that conflict exists, it is quite possible that a different outcome was required in each case.

Second, petitioner has failed to recognize that the Third District has distinguished Bell in subsequent opinions, and that its recent opinions align that court with the Fourth District as to the issue of "shotgun" notices, thus

showing that there is no express and direct conflict between these two districts.

In petitioner's case, the Fourth District stated that the notice was a "shotgun" sort, and cited to only one case, Washington v. State, 895 So. 2d 1141 (Fla. 4th DCA 2005), for its holding that the notice was adequate. Martinez, 904 So. 2d at 565. The Washington case had held that a "shotgun" notice was adequate because it put the defendant on notice that his entire criminal record was at issue, and that he was subject to all sentencing schemes under the statutory section. Washington, 895 So. 2d at 1142. Washington extensively discussed the Third District case of Bell—which petitioner here argues is in conflict—and noted that the Third District had subsequently distinguished its Bell opinion. Washington, 865 So. 2d at 1142-1143.

Bell was decided in 1999, six years prior to petitioner's case. In Bell the Third District had held that the state failed to provide adequate written notice, prior to the defendant entering a plea, of its intent to seek a "Gort" sentence, i.e., that of a violent career criminal, and the most severe possible under the statute. Without replicating the wording of the notice, the Bell court pointed out that the state had provided only a "general" notice, but had

then argued, following the defendant's entry of a plea of guilty, that the defendant qualified for the most severe sentence. Bell, 747 So. 2d at 1029.

In 2001, the Third District distinguished its Bell decision in the case of Sampson v. State, 798 So. 2d 824 (Fla. 3d DCA 2001). In Sampson—in accord with the Fourth District's Martinez decision at issue here—the Third District held that the state's general notice of intent to seek enhancement was not deficient. Sampson, 798 So. 2d at 825. The Third District expressly disagreed with the defendant's argument that he had to be resentenced pursuant to Bell. Sampson, 798 So. 2d at 825. Instead, the court found that its decision in Bell was not applicable based on a number of factual differences, including that in Bell the state's inadequate notice had been filed prior to the defendant entering a guilty plea, so the defendant was not given useful notice that the state would be seeking the most severe of the several classifications under the statute. Sampson, 798 So. 2d at 826. Contrary, the Sampson defendant had been found guilty by a jury, and the notice had been filed after the jury finding. *Id*. Unlike Bell, the state in Sampson had sought the least harsh of the statutory classifications. *Id*. And, the Sampson defendant had stipulated to his prior convictions, fully aware that the state was seeking an enhanced penalty; he also had not preserved the issue for appellate review. *Id*.

Here there is no way to determine, from the face of the Martinez opinion, whether the case is more factually similar to Sampson or to Bell. Critical facts underlying the Fourth District's decision in Martinez were not disclosed, such as whether petitioner pled or was tried by a jury; at what point petitioner received notice; the exact contents of the notice; or whether petitioner stipulated to his convictions and was fully aware that the state was seeking an enhanced sentence.

Just this year the Third District again distanced itself from its Bell decision, and in fact aligned itself with the same opinion relied upon by the Fourth District in deciding petitioner's case. In Forcelledo v. State, 898 So. 2d 1058, 1059 (Fla. 3d DCA 2005), the Third District held that notice was sufficient where the state informed the defendant of three different categories under which it would be seeking enhancement. The district court noted that the state "is allowed to give notice under as many classifications as it chooses, where the State is prepared to show that the defendant meets the statutory criteria." *Id*. The Third District distinguished Bell's general notice as not identifying specific categories, where the Forcelledo "shotgun" notice had identified a number of them. *Id*. Here the Martinez opinion does not reveal if there were any categories specified in the notice, so it cannot be

determined if the facts of the case are more aligned with the older case of Bell or with the recent case of Forcelledo that distinguished Bell.

Of importance to the jurisdictional question posed here is the fact that in Forcelledo the Third District cited with approval the Fourth District case of Washington—which was specifically relied upon by the Fourth District in petitioner's case. Forcelledo, 898 So. 2d at 1059. The Forcelledo court stated that the notice at issue, which it deemed sufficient, "would be more than sufficient in the Fourth District" pursuant to Washington, and that the Third District's "Bell decision has been limited in certain respects by the later decision in Sampson v. State, 798 So. 2d 824 (Fla. 3d DCA 2001)." Forcelledo, 898 So. 2d at 1059 n.1.

CONCLUSION

For the foregoing reasons, discretionary review should not be granted. There is no direct and express conflict, on the same point of law, between the opinion issued in petitioner's case in the Fourth District and the Third District opinion of Bell. There are not enough facts disclosed within these opinions to determine that there is any conflict. Moreover, the Third District has distinguished the opinion relied upon by petitioner, and has aligned itself with the Fourth District in more recent cases that appear to be factually similar to petitioner's case. Review should not be granted.

Respectfully submitted,

CHARLES J. CRIST, JR.
ATTORNEY GENERAL
Tallahassee, Florida

_____
CELIA TERENZIO
Assistant Attorney General
Bureau Chief
Florida Bar Number: 0656879

_____
DIANE F. MEDLEY
Assistant Attorney General
Florida Bar Number: 88102
1515 North Flagler Drive
9th Floor
West Palm Beach, FL 33401
(561)837-5000

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been forwarded via U.S. mail to petitioner: Billy Martinez, #678952, Dade Correctional Institution, 19000 S.W. 377th Street, Suite 300, Florida City, FL 33034-6412, on August 31, 2005.

_____
DIANE F. MEDLEY
Counsel for Respondent

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief has been prepared with Times New Roman 14-point type and complies with the font requirements of Florida Rule of Appellate Procedure 9.210.

_____
Counsel for Respondent