

IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. SC05-1248

WILLIE L. CLARK,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

RESPONDENT'S AMENDED BRIEF ON JURISDICTION

CHARLES J. CRIST, JR
Attorney General
Tallahassee, Florida

CELIA TERENZIO
Assistant Attorney General
Florida Bar Number 0656879

KATHERINE Y. MCINTIRE
Assistant Attorney General
Florida Bar No. 0521159
1515 North Flagler Drive
Suite 900
West Palm Beach, Florida 33401
Telephone: (561) 837-5000
Counsel for Respondent

TABLE OF CONTENTS

| | |
|---|---------------------|
| TABLE | OF |
| AUTHORITIES..... | iii |
| PRELIMINARY | STATEMENT |
| | 1 |
| STATEMENT OF THE CASE AND FACTS | |
| | 2 |
| SUMMARY OF THE | |
| ARGUMENT..... | 3 |
| ARGUMENT..... | |
| . 4 | |
| THERE IS NO BASIS FOR DISCRETIONARY REVIEW OF THE DECISION OF THE FOURTH DISTRICT; THE INSTANT DECISION IS NOT IN EXPRESS OR DIRECT CONFLICT WITH THE DECISIONS OF ANOTHER DISTRICT COURT | |
| CONCLUSION..... | |
| 9 | CERTIFICATE OF TYPE |
| SIZE..... | 10 |
| CERTIFICATE | OF |
| SERVICE..... | 10 |

TABLE OF AUTHORITIES

CASES

California v. Hodari D.,
111 S. Ct. 1547 (1991) 4, 7

Clark v. State,
30 Fla. L. Weekly D 1192 (Fla. 4th DCA May 4, 2005) 2, 4

Gibson v. Maloney,
231 So. 2d 823 (Fla. 1970) 8

State v. Ramsey,
475 So. 2d 671 (Fla. 1985) 4, 6, 7

Sullivan v. State,
430 So. 2d 519 (Fla. 2d DCA 1983) 4, 5, 6

Other Authority Cited

Rule 9.210, Fla. R.App. P. 10

Rule 9.030(a)(2)(A), Fla. R.App. P. 8

Rule 9.030(a)(2)(A)(iv), Fla. R.App. P. 4, 8

Section 944.02(5), Florida Statutes 8

Section 944.40, Florida Statutes 8

PRELIMINARY STATEMENT

Petitioner was the defendant and Respondent was the prosecution in the Criminal Division of the Circuit Court of the Nineteenth Judicial Circuit, in and for Martin County, Florida. Petitioner was the Appellant and Respondent was the Appellee in the Fourth District Court of Appeal ("Fourth District"). 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

On direct appeal, Petitioner's convictions for resisting officer without violence and escape were affirmed. See, Clark v. State, 30 Fla. L. Weekly D 1192 (Fla. 4th DCA May 4, 2005). Petitioner's Motion for Rehearing was subsequently denied.

The instant Notice to Invoke Discretionary Jurisdiction followed.

SUMMARY OF THE ARGUMENT

This Court should decline jurisdiction. The decision of the Fourth District is not in express and direct conflict with the decision of another district court. The cases cited by the Petitioner as in conflict with the instant decision either support the instant decision or are factually dissimilar to the instant decision and are therefore not in conflict.

ARGUMENT

THERE IS NO BASIS FOR DISCRETIONARY REVIEW
OF THE DECISION OF THE FOURTH DISTRICT; THE
INSTANT DECISION IS NOT IN EXPRESS OR DIRECT
CONFLICT WITH THE DECISION OF ANOTHER
DISTRICT COURT

The Petitioner seeks to invoke the discretionary jurisdiction of this Court pursuant to Rule 9.030(a)(2)(A)(iv), Fla. R. App. P., by arguing that the instant decision is in express and direct conflict with Sullivan v. State, 430 So.2d 519 (Fla. 2d DCA 1983), California v. Hodari D., 111 S.Ct. 1547 (1991), and the Florida Standard Jury Instructions for Escape. Further, Petitioner alleges that the opinion in the instant case is in conflict with State v. Ramsey, 475 So.2d 671 (Fla. 1985). An analysis of the cases cited, however, confirm that there is no conflict, thus no basis for discretionary review.

In the instant case, the police found Petitioner sitting in a parked car and advised him that he was under arrest for an outstanding warrant. See, Clark v. State, 30 Fla. L. Weekly D 1192 (Fla. 4th DCA May 4, 2005). The deputy ordered Petitioner out of the vehicle and again explained that he was being arrested for an outstanding warrant. Id. The deputy warned Petitioner to not attempt to flee. Id. When Petitioner began moving away, the deputy tried to grab him,

than tried to stop him with pepper spray. Id. Petitioner successfully fled, however, was soon apprehended. Id.

As a result of his conduct, Petitioner was convicted of both escape and resisting officer without violence. Id. The Fourth District Court of Appeal affirmed Petitioner's convictions on direct appeal holding that the convictions did not constitute double jeopardy. Id.

Petitioner asserts that the decision in the instant case is in direct conflict with the decision in Sullivan v. State, 430 So.2d 519 (Fla. 2d DCA 1983) in that Sullivan "holds that custody (rather than the mere right to custody) is required for an escape conviction". See, Initial Brief, p. 4. Sullivan, however, stands for a proposition outside of what is relevant in the instant case. As such, there is no conflict.

Sullivan was charged with escape after escaping from the county jail where he was an inmate. Id. At trial, the judge took judicial notice that Sullivan had pled guilty on an earlier case and had been remanded to the jail to await sentencing. Id. On appeal, Sullivan argued that the state failed to prove that he was in lawful custody at the time of the alleged escape. Id. Specifically, Sullivan alleged that sameness of name was insufficient to establish his identity as the person who was previously committed to the jail. Id.

The Second District Court of Appeal explained that in order to support a conviction for escape, the state must prove beyond a reasonable doubt that Sullivan had escaped from "lawful custody". Id. The District Court affirmed Sullivan's conviction finding that the State had presented sufficient evidence that it was Sullivan indeed who was in "lawful custody" at the time he escaped. Id.

Contrary to Petitioner's assertion, Sullivan does not stand for a proposition which distinguishes actual from constructive custody, but stands for a proposition about "lawful custody" with regards to evidence of identity for purposes of an escape conviction. The instant case is not one in which identity was an issue. As such, Petitioner's reliance on Sullivan is inappropriate, and discretionary review should be denied.

Petitioner further argues that review should be granted because "utilizing [State v. Ramsey, 475 So.2d 671 (Fla. 1985)] to affirm an escape conviction where [Petitioner] [was] never in actual custody is a misapplication of Ramsey and provides misapplication conflict". See, Initial Brief, p. 4. This argument must fail, as well.

In Ramsey, Ramsey had been stopped for several traffic infractions when the police officer learned that he had

outstanding capiases against him. Id. Ramsey was informed that he was under arrest as a result of the capiases and told to put his hands on the trunk of the car. Id. Ramsey ran from the scene. Id. He was subsequently convicted of escape. Id. On appeal, the district court reversed the conviction holding that the legislature did not intend to punish the act of fleeing from an arresting officer. Id. The Florida Supreme Court disagreed and quashed the district court's decision holding that in order to gain a conviction for escape, the State need only show a right to legal custody, and a conscious and intentional act of the defendant in leaving the established area of such custody. Id.

The facts in Ramsey are on point with the instant facts. As such, Ramsey was not misapplied by the Fourth District Court of Appeal in the instant decision and review should be denied.

Petitioner further alleges that the decision in the instant case "is also at odds with California v. Hodari D., 111 S.Ct. 1547 (1991) which holds that a mere show of authority does not constitute a seizure". See, Initial Brief, p. 5. However, the facts in Hodari D. are clearly inapposite to the facts in the instant case, thus Petitioner's argument does not pass muster.

In Hodari D., a search and seizure case, Hodari fled at the sight of an unmarked police car. As Hodari ran from the officer that emerged from the police car, he threw away a rock of crack cocaine which was recovered. Id. Based on the fact that the officer did not have reasonable suspicion required to justify stopping Hodari, the crack was suppressed. Id. In the instant case, the outstanding warrant for Petitioner gave the officer probable cause for Petitioner's arrest. As such, Petitioner's reliance on Hodari D. is misplaced.

Finally, Petitioner asserts that the decision in the instant case "also contradicts the Standard Jury Instruction 27.1..." as well as complains that "by going beyond the plain text of a statute that requires actual confinement or custody (rather than a mere right to custody) an anomalous result occurs". Again, however, Petitioner's argument does not support a basis for jurisdiction.

First, Rule 9.030(a)(2)(A)(iv), Fla. R.App. P. states that discretionary jurisdiction of this Court may be sought to review decisions of district courts of appeal that "expressly and directly conflict with a decision of another district court of appeal or of the supreme court on the same question of law".¹

¹ Rule 9.030(a)(2)(A), Fla. R.App. P., also outlines five other forms of asserting conflict, however, Rule 9.030(a)(2)(A)(iv) is the only relevant rule for purposes of

The Florida Standard Jury Instructions for Escape is not a decision which would qualify for conflict. As such, discretionary review on this basis should be denied.

Further, neither Section 944.02(5), nor Section 944.40, Florida Statutes, contain language which requires "actual confinement or custody (rather than a mere right to custody", as suggested by Petitioner. Petitioner's argument on this front is merely disagreement with well-established authority on the concept of custody. Discretionary review on such a basis should be denied, as well. See, Gibson v. Maloney, 231 So.2d 823 (Fla. 1970)("It is conflict of decisions, not conflict of opinions or reasons that supplies jurisdiction for review by certiorari").

CONCLUSION

WHEREFORE, based on the foregoing arguments and the authorities cited therein, Respondent respectfully requests this Court DECLINE Petitioner's request for discretionary review.

Respectfully submitted,

CHARLES J. CRIST, JR.
Attorney General
Tallahassee, Florida

CELIA TERENCE
Bureau Chief
Assistant Attorney General

the instant discussion.

Florida Bar No. 0656879

KATHERINE Y. MCINTIRE
Assistant Attorney General
Florida Bar No. 0521159
1515 North Flagler Drive
Suite 900
West Palm Beach, FL 33401
(561) 837-5000
Counsel for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing "Respondent's Brief on Jurisdiction" has been furnished to: Jeffrey L. Anderson, Esq., 421 Third Street/Sixth Floor, West Palm Beach, FL 33401 _____.

KATHERINE Y. MCINTIRE

CERTIFICATE OF TYPE SIZE AND STYLE

In accordance with Fla. R.App. P. 9.210, the undersigned hereby certifies that the instant brief has been prepared with 12 point Courier New Type.

KATHERINE Y. MCINTIRE