IN THE SUPREME COURT OF FLORIDA

CASE NO. SC05-1277

DCA NO. 3D05-273

NATHANIEL DAILY,

Petitioner,

-vs-

THE STATE OF FLORIDA,

Respondent.

BRIEF OF RESPONDENT ON JURISDICTION

ON PETITION FOR DISCRETIONARY REVIEW
FROM THE DISTRICT COURT OF APPEAL
OF FLORIDA, THIRD DISTRICT

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INTRODUCTION

The Petitioner, Nathaniel Daily, was the Appellant in the district court of appeal and the Defendant in the Circuit Court. Respondent, the State of Florida, was the Appellee in the district court of appeal, and the prosecution in the Circuit Court. In this brief, the parties will be referred to as they appear before this Court.

STATEMENT OF THE CASE AND FACTS

Petitioner, Nathaniel Daily, appealed from the denial of his motion to correct illegal sentence pursuant to Rule 3.800(a), Florida Rules of Criminal Procedure. Petitioner argued that the Notice of Intent to Seek an Enhanced Penalty was a "shotgun" notice, and was insufficient. In its opinion, which was issued upon the granting of Petitioner=s Motion For Clarification, the lower court held that the claimed notice deficiency did not render the sentence "illegal" under Rule 3.800(a). Additionally, the lower court held that such a claim may only be raised in a motion for postconviction relief filed pursuant to Florida Rule of Criminal Procedure 3.850. The court noted that since the Petitioner's conviction became final more than two years ago, he would, be procedurally barred from raising this claim pursuant to Florida Rule of Criminal

Procedure 3.850. Accordingly, the Third District Court of Appeal affirmed the denial. Daily v. State, 905 So. 2d 985 (Fla. 3d DCA 2005). Petitioner thereafter filed the subject pro se petition for review.

SUMMARY OF THE ARGUMENT

The Supreme Court of Florida does not have jurisdiction to review the Third District Court of Appeal=s decision in the instant case. The lower court=s opinion does not expressly and directly conflict with McClendon v. State, 905 So. 2d 916 (Fla. 4th DCA 2005), which held that there was no merit to defendant=s claim that the Ashotgun@ notice was inadequate. The issue of whether or not such a claim was cognizable in a rule 3.800(a) motion was not addressed at all, much less expressly or directly. Ultimately, like the lower court in the instant case, McClendon affirmed the lower court=s denial of defendant’s motion to correct illegal sentence. The fact that the subject case was denied on procedural grounds and the McClendon case addressed the merits does not create a direct and express conflict upon which this Court would have jurisdiction to review the case.

ARGUMENT

THE DECISION OF THE LOWER COURT DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL IN MCCLENDON V. STATE, 905 SO.2D 916(FLA. 4TH DCA 2005).(REPHRASED).

Petitioner claims that the Court has jurisdiction pursuant to Rule 9.030(a)(2)(A)(iv),Fla. R. App. P., which provides for this Court=s discretionary review of decisions of district court=s 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. Respondent maintains that the Court is without jurisdiction to review this decision, as no such conflict exists.

The lower court in the instant case affirmed the trial court=s denial of Petitioner=s motion to correct an illegal sentence in which Petitioner alleged that the Notice of Intent to Seek an Enhanced Penalty was a "shotgun" notice, and was insufficient. In its opinion, the lower court held, inter alia, that the claimed notice deficiency did not render the sentence "illegal" under Rule 3.800(a). Daily v. State, 905 So. 2d 985 (Fla. 3d DCA 2005).

Petitioner has cited to the Fourth District Court of Appeal

case of McClendon v. State, 905 So. 2d 916 (Fla. 4th DCA 2005) as

being in direct and express conflict with the lower court=s opinion in the instant case. No such conflict exists.

Like the instant case, the McClendon opinion affirmed the lower court=s dismissal of the defendant=s motion to correct illegal sentence which alleged that the State=s Ashotgun@ notice of intent to seek enhanced penalties did not provide him with adequate notice of the classification and penalty he would be subject to upon conviction. The court in McClendon cited to its opinion in Washington v. State, 895 So.2d 1141(Fla. 4th DCA 2005), in which it held that such a Ashotgun@ notice is in fact adequate to notify a defendant that his entire criminal record is at issue. However, the court in no way addressed the issue of whether such a claim is cognizable by way of a 3.800(a) motion. It is unlikely that the court in McClendon intended to hold that the issue was cognizable, as the same court had previously held that such a claim was not properly raised under rule 3.800(a). LaMar v. State, 823 So. 2d 231 (Fla. 4th D.C.A. 2002).

Thus, even though the McClendon court did not deny relief on the procedural ground that the claim was not cognizable in a rule 3.800(a) motion, it cannot be said that the opinion is in

direct and express conflict when there is no mention whatsoever as to whether such a claim is cognizable. Moreover, like the opinion below, McClendon ultimately found that the same claim which was

presented in Petitioner=s motion does not render the sentence illegal. As the subject case is not in conflict with the McClendon case, this Court is without jurisdiction.

CONCLUSION

As indicated by the foregoing facts, authorities and reasoning, the lower court=s opinion does not expressly and directly conflict with the Fourth District Court of Appeal case of

McClendon v. State, 905 So. 2d 916 (Fla. 4th DCA 2005). Thus, the Respondent respectfully maintains that this Court lacks jurisdiction and the petition to invoke discretionary jurisdiction should be denied.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Amended Brief of Respondent On Jurisdiction was mailed to NATHANIEL DAILY, pro se, DC#189544, South Bay Correctional Facility, P.O. Box 7171, South Bay, Florida 33493-7171,, on this 15th day of November, 2005.

____
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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief was typed in font Courier New,12 point, in compliance with Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

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