

IN THE SUPREME COURT OF FLORIDA

DANIEL LEE MOORE,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Case No.: SC05-1286

DCA NO.: 2D04-2341

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

JURISDICTIONAL BRIEF OF RESPONDENT

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## STATEMENT OF THE CASE AND FACTS

The pertinent history and facts are set out in the decision of the lower tribunal. Moore v. State, 903 So. 2d 238 (Fla. 2d DCA 2005).

In this Anders appeal, the circuit court denied Daniel Lee Moore's motion for postconviction DNA testing pursuant to Florida Rule of Criminal Procedure 3.853, which alleged that DNA testing on certain physical evidence would exonerate Moore of the crimes of two counts of capital sexual battery. After an evidentiary hearing, the circuit court determined that no physical evidence containing DNA still existed. We affirm without prejudice to any right Moore may have to file a facially sufficient motion pursuant to rule 3.850.

One of two issues that Moore raises on his own behalf in this appeal merits discussion. The record reflects that some of the physical evidence sought for testing--a "rape kit"--was destroyed three months prior to Moore's trial in 1987. At the evidentiary hearing, Moore's counsel attempted to raise the issue of whether the evidence was destroyed in bad faith under Arizona v. Youngblood, 488 U.S. 51, 102 L. Ed. 2d 281, 109 S. Ct. 333 (1988). In Youngblood, the United States Supreme Court addressed the extent to which a defendant is deprived of the right to a fair trial when the State fails to preserve physical evidence for testing before trial.

Id. at 239.

The Second District Court of Appeals held that the circuit court properly refused to consider the Youngblood issue, "which was beyond the scope of the hearing to determine whether the

physical evidence Moore sought for testing still existed." Moore, 903 So. 2d at 239. The Second District Court of Appeals also held that the circuit court correctly determined that Florida Rule of Criminal Procedure 3.853 presents no occasion to rule on a Youngblood claim. Id.

Rule 3.853 provides procedures for a convicted person to obtain DNA testing if certain requirements are met, including the requirement that DNA evidence must still exist. Fla. R. Crim. P. 3.853(c)(5)(A); see §925.11(2)(f)(1), Fla. Stat. (2003). A rule 3.853 proceeding ends in one of two ways: Either the court denies the request for DNA testing or the court orders DNA testing. If the court orders DNA testing and the results are favorable to the convicted person, he or she may file a motion to vacate pursuant to rule 3.850 (or rule 3.851 in death penalty cases). If the rule 3.850 motion is based solely on the results of the DNA testing, the motion is treated as a claim of newly discovered evidence. Fla. R. Crim. P. 3.853(d)(2).

Because a colorable Youngblood claim may possibly exist as a result of information that Moore claims to have received through the rule 3.853 proceeding, Moore may have a basis for relief under rule 3.850, provided that the requirements for newly discovered evidence are met.

Id.

On May 8, 2005, Petitioner filed a motion for rehearing which was denied by the Second District Court of Appeals on June 22, 2005.



## SUMMARY OF THE ARGUMENT

ISSUE ONE. There is no express and direct conflict between the decision of the Second District Court of Appeal in Moore v. State, 903 So. 2d 238 (Fla. 2d DCA 2005), and the decisions in Thomas v. State, 785 So. 2d 626 (FLA. 2d DCA 2001), Wood v. Georgia, 450 U.S. 261 (1980), Lee v. State, 690 So. 2d 664 (FLA. 1st DCA 1997), and Forsett v. State, 790 So. 2d 474 (FLA. 2d DCA 2001), and any of the cases cited by the petitioner in his pro se jurisdictional brief, thus, discretionary jurisdiction for review is not warranted.

ISSUE TWO. There is no express and direct conflict between the decision of the Second District Court of Appeal in Moore v. State, 903 So. 2d 238 (Fla. 2d DCA 2005) and the decision in Arizona v. Youngblood, 488 U.S. 51 (1988), and any of the cases cited by the petitioner in his pro se jurisdictional brief, thus, discretionary jurisdiction for review is not warranted.

**ARGUMENT**

**ISSUE ONE**

WHETHER THE SECOND DISTRICT COURT OF APPEALS  
DECISION IN MOORE V. STATE, 903 SO. 2D 238  
(FLA. 2D DCA 2005), EXPRESSLY AND DIRECTLY  
CONFLICTS WITH THIS COURT'S DECISIONS IN  
THOMAS V. STATE, 785 SO. 2D 626 (FLA. 2D DCA  
2001), WOOD V. GEORGIA, 450 U.S. 261 (1980),  
LEE V. STATE, 690 SO. 2D 664 (FLA. 1ST DCA  
1997), AND FORSETT V. STATE, 790 SO. 2D 474  
(FLA. 2D DCA 2001)? [RESTATED]

This Court has authority as the highest court of the State to resolve legal conflicts created by the district courts of appeal. Article V, §3(b)(3) of the Florida Constitution authorizes this Court to review a decision of a district court of appeal that expressly and directly conflicts with a decision of another district court of appeal or with a decision of the Florida Supreme Court. This Court has held that review under Article V, §3(b)(3), Florida Constitution, requiring express and direct conflict, is unavailable "where the opinion below establishes no point of law contrary to a decision of th[e Supreme] Court [of Florida] or other district court." The Florida Bar v. B.J.F. 530 So. 2d 286, 289 (Fla. 1988). The rationale for limiting this Court's jurisdiction is the recognition that district courts are courts primarily of final appellate jurisdiction and to allow such courts to become intermediate courts of appeal would result in a condition far



more detrimental to the general welfare and the speedy and efficient administration of justice than that which the system was designed to remedy.@ Jenkins v. State, 385 So. 2d 1356, 1358 (Fla. 1980).

Conflicts between decisions must appear within the "four corners" of the decision below and not the record before the district court. Reaves v. State, 485 So. 2d 829, 830 (Fla. 1986).

As this Court explained in The Florida Star v. B.J.F., 530 So. 2d 286, 288 (Fla. 1988), the state constitution creates two separate concepts regarding this Court's discretionary review. The first concept is the broad general grant of subject-matter jurisdiction. The second, more limited concept, is a constitutional command as to how this Court may exercise its discretion in accepting jurisdiction. Id. at 288. This Court noted it lacked jurisdiction to review district court opinions that fail to expressly address a question of law. Id.

In this case, none of the cases cited by Petitioner in any way constitute "direct and express" conflict with the decision of Second District Court of Appeal in Moore. The Second District Court of Appeals did not address this issue in its opinion. Here, the Second District's opinion in Moore is devoid of some statement or citation in the opinion that hypothetically

could create conflict if there were another opinion reaching a contrary result. Thus, Petitioner fails to demonstrate that there is express and direct conflict of decisions and there is no justification for this Court to exercise its discretionary jurisdiction to review the decision of the Second District Court of Appeal.

## ISSUE TWO

WHETHER THE SEDOND DISTRICT COURT OF APPEALS  
DECISION IN MOORE V. STATE, 903 SO. 2D 238  
(FLA. 2D DCA 2005), EXPRESSLY AND DIRECTLY  
CONFLICTS WITH THIS COURT'S DECISION IN  
ARIZONA V. YOUNGBLOOD, 488 U.S. 51 (1988)?  
[RESTATED]

In Petitioner's jurisdictional brief, he does not establish conflict. Petitioner's Youngblood claim and its merits were not denied below. The Second District Court of Appeals did not rule on the merits of Petitioner's Youngblood claim. The Second District Court of Appeals held that Petitioner's Youngblood claim was not noticed and pleaded below. The Second District Court of Appeals found that a "Youngblood claim **may** possibly exist as a result of information that Moore claims to have received through the rule 3.853 proceeding, Moore **may** have a basis for relief under rule 3.850, provided that the requirements for newly discovered evidence are met." Moore, 903 So. 2d at 239. (emphasis added). There is no decisional conflict of holdings. Both the lower court and the Second District Court of Appeals properly refused to consider the Youngblood issue and correctly determined that rule 3.853 presents no occasion to rule on a Youngblood claim unless it was properly noticed and pleaded.

Here, Petitioner may file a Rule 3.850 Motion for

Postconviction Relief in the Circuit Court where he was convicted, provided he is not procedurally barred from doing so.

Consequently, there is no justification for this Court to exercise its discretionary jurisdiction to review the decision of the Second District Court of Appeal.

**CONCLUSION**

Respondent respectfully requests that this Honorable Court deny review in that there is no "express and direct" conflict jurisdiction and no other valid legal grounds for discretionary jurisdiction to be exercised by the Court.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Daniel Lee Moore, DC# 107858, Desoto Correctional Institution, 13617 Southeast Highway 70, Arcadia, Florida 34266-7800, this 29th day of August, 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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