

IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. SC05-1298
(4th DCA 4D05-1624)

MALCOLM HOSWELL,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

RESPONDENT'S BRIEF ON JURISDICTION

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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 Fifteenth Judicial Circuit, in and for Palm Beach County, Florida. Petitioner was the Appellant and Respondent was the Appellee 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.

In this brief, the symbol "A" will be used to denote the appendix attached hereto.

All emphasis in this brief is supplied by Respondent unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

The only relevant facts to a determination of this Court's discretionary jurisdiction under Article V, Section 3(b)(3) of the Florida Constitution are those set forth in the appellate opinion sought to be reviewed. The opinion sought to be reviewed in its entirety is as follows:

ORDERED that petitioner's motion filed May 26, 2005 for rehearing and motion for rehearing en banc is hereby denied.

(Petitioner's Appendix).

ORDERED that, even though this petition is successive and may be summarily denied, Francois v. Wainwright, 470 So. 2d 685 (Fla. 1985), this Court has reviewed all the claims on the merits, and the petition is denied with prejudice; further,

ORDERED that petitioner is admonished, for the second time, that the continued filing of successive petitioners (sic) will result in sanctions. Rooney v. State, 699 So. 2d 1027 (Fla. 5th DCA 1997); Patterson v. State, 788 So. 2d 397 (Fla. 1st DCA 2001).

(State Appendix).

SUMMARY OF THE ARGUMENT

The Supreme Court of Florida lacks jurisdiction to review per curiam denials of relief on extraordinary writ petitions that were issued without opinion or explanation. Since the District Court Order in question, which denies Petitioner's Motions for rehearing on his Writ of Habeas Corpus contains no opinion or citation to authority, this Court lacks jurisdiction to review this case. If this Court determines that Petitioner intended to argue that the District's Court's Order denying his Writ of Habeas Corpus, this Court should still find it is without jurisdiction because although the District Court denied the Writ on the merits, it did so without explanation or citation to authority.

ARGUMENT

THE SUPREME COURT OF FLORIDA LACKS
JURISDICTION TO REVIEW THE PER CURIAM
DENIALS, WITHOUT OPINION, ISSUED BY THE
DISTRICT COURT OF APPEAL, FOURTH DISTRICT,
IN THE INSTANT CASE.

This Honorable Court has authority pursuant to Article V, Section 3(b)(3), (4), or (5) of the *Florida Constitution* (1980) to review decisions rendered by one of the several district courts of appeal of this State, where the **Opinion** rendered falls under one of the specified categories. This Court, however, has specifically declared that it is **without jurisdiction** to review per curiam denials of relief on extraordinary writ petitions that were issued **without opinion or explanation** Stallworth v. Moore, 827 So. 2d 974, 978 (Fla. 2002).

The Supreme Court of Florida lacks jurisdiction to review per curiam denials of relief on extraordinary writ petitions that were issued without opinion or explanation. Since the District Court Order in question, which denies Petitioner's Motions for rehearing on his Writ of Habeas Corpus contains no opinion or citation to authority, this Court lacks jurisdiction to review this case. If this Court determines that Petitioner

intended to argue that the District's Court's Order denying his Writ of Habeas Corpus, this Court should still find it is without jurisdiction because although the District Court denied the Writ on the merits, it did so without explanation or citation to authority.

Petitioner filed a Writ of Habeas Corpus on April 20, 2005, alleging ineffective assistance of counsel. In the Jurisdictional Brief before this Court Petitioner alleges that the Fourth District's June 20, 2005 Order denying Petitioner's Motions for Rehearing and Rehearing En Banc, directly and expressly conflicts with Supreme Court and District Court cases. Petitioner was seeking rehearing on the May 17, 2005 Order denying the April 20, 2005 Writ, and specifically stated that even though the Petition was successive and could have been summarily denied, it was denied on the merits without explanation or citation to authority. (Respondent's Appendix). Petitioner was admonished, for a second time, that the continued filing of successive petitions would result in sanctions. (Respondent's Appendix).

Based on the foregoing and in reliance of the reasoning of Stallworth, the State argues that this Court lacks jurisdiction to review the subject District Court Order and the Petition should be dismissed. Stallworth v. Moore, 827 So. 2d at 978.

CONCLUSION

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

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing "Respondent's Brief on Jurisdiction" has been furnished by U. S. Mail to: MALCOLM HOSWELL, #620429, CALHOUN CORRECTIONAL INSTITUTION, 19562 INSTITUTIONAL DRIVE, BLOUNTSTOWN, FLORIDA 32424, this 14th day of September, 2005.

Of Counsel

CERTIFICATE OF TYPE SIZE AND STYLE

In accordance with Florida Rule of Appellate Procedure 9.210, counsel for the State of Florida, hereby certifies that the instant brief has been prepared with 12 point Courier New type, a font that is not proportionately spaced.

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