

IN THE SUPREME COURT OF FLORIDA

DENNIS JAMES JOHNSON,

Petitioner,

v.

CASE NO. SC05-1329

LOWER TRIBUNAL CASE NO. 5D04-3708

STATE OF FLORIDA,

Respondent.

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ON NOTICE TO INVOKE DISCRETIONARY REVIEW  
OF A DECISION OF THE FIFTH DISTRICT COURT OF APPEAL

RESPONDENT'S BRIEF ON JURISDICTION

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STATEMENT OF THE CASE

In an opinion filed on May 6, 2005, the Fifth District Court of Appeal denied Petitioner's Petition for Writ of Mandamus and prohibited him from filing any further *pro se* pleadings relating to his 1991 Orange County convictions. In that opinion, the Court noted that Petitioner pled guilty to armed robbery, burglary with a battery and escape in 1991 and did not file a direct appeal. Likewise, he did not appeal the trial court's denials of his first three Rule 3.850 motions. The Court then went on to state that this was Petitioner's seventh time filing post-conviction appellate proceedings attacking his concurrent 1991 sentences and that, pursuant to State v. Spencer, 751 So.2d 47 (Fla. 1999), it had issued an order to show cause why Petitioner should not be barred from any further *pro se* access to the Court. His response to that order to show cause simply rehashed his same old meritless and repetitive arguments and, given that response, the Court prohibited Petitioner from filing any further *pro se* pleadings relating to these 1991 Orange County convictions and denied his Petition for Writ of Mandamus. (See Appendix I - Johnson v. State, 903 So.2d 978 (Fla. 5<sup>th</sup> DCA 2005)). Petitioner's Motion for Rehearing was denied by order filed on June 23, 2005 and

Petitioner's Notice to Invoke Discretionary Jurisdiction is dated July 20, 2005.

SUMMARY OF ARGUMENT

Petitioner has cited no Florida cases with which the opinion of the District Court expressly and directly conflicts. He has not raised any other bases upon which this Court could exercise its discretionary jurisdiction under Article V, Section 3(b)(3) of the Florida Constitution or Florida Rule of Appellate Procedure 9.030(a)(2)(A).

ARGUMENT - RESTATED

THE OPINION OF THE FIFTH DISTRICT COURT OF APPEAL IN THE CASE SUBJUDICE IS NOT IN EXPRESS AND DIRECT CONFLICT WITH ANY OF THE DECISIONS CITED BY PETITIONER.

Under Article V, Section 3 (b)(3) of the Florida Constitution and Florida Rule of Appellate Procedure 9.030(a)(2)(A)(iv), this Court may review any decision of a district court of appeal that expressly and directly conflicts with a decision of another district court of appeal or of the Supreme Court on the same question of law. In Reaves v. State, 485 So.2d 829 (Fla. 1986), this Court said that the conflict between decisions must be express and direct, i.e., it must appear within the four corners of the majority decision. Petitioner has cited no Florida cases in his jurisdictional brief which are in express and direct conflict with the opinion of the Fifth District Court of Appeal in the instant case, Johnson v. State, 903 So.2d 978 (Fla. 5<sup>th</sup> DCA 2005). (Appendix I).

In 1991, Petitioner entered pleas of guilty to armed robbery, burglary with a battery and escape. He did not file a direct appeal from those convictions. Likewise, he did not appeal the trial court's denials of his first three Rule 3.850 motions. The Court went on to state that this was Petitioner's

seventh time filing post-conviction appellate proceedings attacking his concurrent 1991 sentences and that, pursuant to State v. Spencer, 751 So.2d 47 (Fla. 1999), it had issued an order to show cause why he should not be barred from further *pro se* access to the Court. His response simply rehashed his same old meritless and repetitive arguments and, given that response, the Court then prohibited Petitioner from filing any further *pro se* pleadings.

The two cases cited by Petitioner in the argument portion of his jurisdictional brief are State v. McBride, 848 So.2d 287 (Fla. 2003) and McCrae v. State, 437 So.2d 1388 (Fla. 1983), neither of which deals with anything comparable to the situation in the instant case where a *pro se* litigant is prohibited from filing any further repetitive and meritless pleadings. In McBride, the Court answered a certified question from the Fifth District Court of Appeal relating to a successive Rule 3.800 motion and concluded that, under the facts of that case, collateral estoppel barred relief. McCrae involved an incomplete order on a Rule 3.850 motion in a capital case. Those two cases are not "on all fours" with the facts or the law in the instant case and would not establish "direct conflict"



for purposes of this Court's exercise of its discretionary jurisdiction.

CONCLUSION

Since Petitioner has failed to establish express and direct conflict or any other basis upon which this Court could exercise its discretionary jurisdiction in this case, Respondent respectfully prays this Honorable Court decline to do so.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Respondent's Brief on Jurisdiction has been mailed to Dennis James Johnson, Petitioner, DC# 491572, Dorm M Bunk 115 L, Sumter Correctional Institution, P. O. Box 667, Bushnell, Florida 33513, this 15<sup>th</sup> day of August, 2005.

CERTIFICATE OF 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).

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Assistant Attorney General