

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC05-1378

DCA NO. 3D05-211

TERENCE JOHNSON,

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, Terrence Johnson, 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, Terrence Johnson, appealed from the summary denial of his motion to correct illegal sentence pursuant to Rule 3.800, Florida Rules of Criminal Procedure. In its opinion, the Third District Court of Appeal noted that Petitioner acknowledged that he had previously raised the same issue on appeal in at least two occasions and that the denial of relief was affirmed by the appellate court. Johnson v. State, 873 So. 2d 1229 (Fla. 3d DCA 2004) and Johnson v. State, 803 So. 2d 737 (Fla. 3d DCA 2001). Petitioner argued that the application of collateral estoppel would result in manifest injustice. The appellate court disagreed. Petitioner claimed that the trial court's reasons

for retaining jurisdiction over one-third of his sentence were legally insufficient and that the appellate court never ruled on the merits of his claim. The appellate court found that Petitioner was under the misimpression that the court's prior decisions without written opinion did not result in a ruling on the merits. The lower court's opinion stated that its prior cases fully considered his claim and rejected it. Johnson v. State, 873 So. 2d 1229 (Fla. 3d DCA 2004); Johnson v. State, 803 So. 2d 737 (Fla. 3d DCA 2001).

Nevertheless, the lower court write an opinion to explain that there is no "manifest injustice" to preclude the application of collateral estoppel. The opinion stated:

In the instant case, the defendant was convicted and adjudicated guilty of one count of sexual battery and three counts of kidnapping. At the sentencing hearing, the State explained:

The Court is well aware of the facts in this particular case, as the Court sat through the trial one week in length. With respect to these facts, the State will not belabor the particular viciousness of the offense. I would remind the Court that the woman who was raped is a mother of two children. The two other individuals who were victimized by Mr. Terrence Johnson were locked inside a sauna turned to maximum heat for a period of an hour and a

half. The Court has heard all of the testimony. It is reprised [sic] of the background of Mr. Johnson, his previous record, it is aware of his conduct in the proceedings in this trial. I would request that the Court consider the particular viciousness of this offense, the seriousness of the offenses, the undertaking with which the police had to go through to take this individual into custody. And the State would request that the Court protect society, specifically the State of Florida, from further acts of this particular individual.

After hearing from defense counsel, the trial court gave the following reasons for retaining jurisdiction: that the evidence of guilt was overwhelming, that the crime was committed in a violent, vicious, and premeditated manner, that the defendant showed indifference to the pleas of mercy by the rape victim, that the crimes were deliberate, and that the defendant intentionally inflicted both mental and physical pain upon all the victims without any show of remorse. We hold that these reasons were stated with sufficient particularity for the trial court to properly retain jurisdiction. Snow v. State, 464 So. 2d 1313 (Fla. 1st DCA 1985) (holding that trial court's statement that the defendant "terrified and terrorized a sixteen-year-old girl" was sufficient to justify retention of jurisdiction).

Because the defendant cannot demonstrate manifest injustice, collateral estoppel applies, and we write only to advise the defendant that his claims have been denied on the merits and to caution the defendant that there may be repercussions to abusing the judicial process. Duncan v. State, 728 So. 2d 1237 (Fla. 3d DCA 1999) (cautioning that a prisoner's gain time is subject to

forfeiture if he or she is found to have brought a frivolous suit, action, claim, proceeding, or appeal in any court).

Johnson v. State, 899 So.2d 1165 (Fla. 3rd DCA 2005).
Petitioner sought rehearing, which was denied by the appellate court. Johnson v. State, 906 So.2d 1075 (Fla. 3rd 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 Abbott v. State, 421 So.2d 24 (Fla. 1st DCA 1982) and Hampton v. State, 764 So.2d 829 (Fla. 1st DCA 2000) and the Second District Court of Appeal case of Sanders v. State, 400 So.2d 1015 (Fla. 2d DCA 1981).

As opposed to the cases cited to by Petitioner, the trial court's sentencing order provided sufficiently specific reasons for its retention of jurisdiction over a portion of Petitioner's sentence.

ARGUMENT

THE DECISION OF THE LOWER COURT DOES NOT
EXPRESSLY AND DIRECTLY CONFLICT WITH THE
DECISIONS OF THE FIRST DISTRICT COURT OF

APPEAL ABBOTT V. STATE, 421 SO.2D 24(FLA.
1ST DCA 1982) OR HAMPTON V. STATE, 764
SO.2D 829 (FLA. 1ST DCA 2000) OR THE
DECISION OF THE SECOND DISTRICT COURT OF
APPEAL IN 400 SO.2D 1015 (FLA. 2ND DCA
1981).(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 direct 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's opinion in the instant case affirmed the trial court's denial of Petitioner's motion to correct an illegal in which Petitioner alleged that the trial court failed to satisfy the requirements of Fla. Statute Section 947.16(3)(a) when it retained jurisdction over one third of his 324 year sentence.

Petitioner has cited to the First District Court of Appeal cases of Abbott v. State, 421 So.2d 24 (Fla. 1st DCA 1982) and Hampton v. State, 764 So.2d 829 (Fla. 1st DCA 2000)

and the Second District Court of Appeal case of Sanders v. State, 400 So.2d 1015 (Fla. 2d DCA 1981) as being in direct and express conflict with the lower court's opinion in the instant case.

Defendant cites to each of the above case for the proposition that Florida Statute section 947.16(3)(a) requires that reasons for retention of jurisdiction over a sentence must be specific and particular. Pursuant to these cases, Petitioner argues that a trial court's general reference to "the circumstances surrounding the particular incidents"; "the nature of both offenses"; "the seriousness of the offenses" or the "gravity of the offenses" absent any specific facts and circumstances of the crimes is not sufficient.

In Sanders, the sentencing order merely stated that the sentencing judge was retaining jurisdiction for one third of sentence pursuant to section 947.16(3), Florida Statutes (1979). In Abbott, the trial judge stated that he was retaining jurisdiction based on the "circumstances of the offenses... and the gravity of the offenses", but never cited to what the circumstances were nor did the order provide any facts relating to the crime. In Hampton, the court stated that the reason why it was retaining jurisdiction was that the defendant's past manner of offenses, both as a juvenile and an

adult, indicates a total disrespect for the law and that the defendant apparently cannot live in a lawful society.

The subject case is not in conflict with the cases cited by Petitioner because the trial court in the instant case did give reasons for retaining jurisdiction over the sentence which provided specific facts and circumstances of crimes involves. As indicated in the lower court's opinion, the trial court stated that it was retaining jurisdiction based on the fact that the evidence of guilt was overwhelming; that the crime was committed in a violent, vicious, and premeditated manner; that the defendant showed indifference to the pleas of mercy by the rape victim, that the crimes were deliberate; and that the defendant intentionally inflicted both mental and physical pain upon all the victims without any show of remorse. Pursuant to each of the cases cited to by Petitioner, the reasons provided by the trial court provided a sufficient basis for the trial court to retain jurisdiction over the sentence. Thus, there is no jurisdiction on the basis of conflict.

THE DECISION OF THE LOWER COURT DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH THE DECISIONS OF THE FIRST DISTRICT COURT OF APPEAL ABBOTT V. STATE, 421 SO.2D 24(FLA. 1ST DCA

1982) OR HAMPTON V. STATE, 764 SO.2D 829 (FLA. 1ST DCA 2000)
OR THE DECISION OF THE SECOND DISTRICT COURT OF APPEAL IN 400
SO.2D 1015 (FLA. 2ND DCA 1981).(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.

CONCLUSION

As indicated by the foregoing facts, authorities and
reasoning, the lower court's opinion does not expressly and
directly conflict with the First District Court of Appeal
cases of Abbott v. State, 421 So.2d 24 (Fla. 1st DCA 1982) and
Hampton v. State, 764 So.2d 829 (Fla. 1st DCA 2000) and the
Second District Court of Appeal case of Sanders v. State, 400
So.2d 1015 (Fla. 2d DCA 1981). 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 TERRENCE JOHNSON, pro se, DC#078187, Hardee Correctional Institution, 6901 State Road 62, Bowling Green, Florida 33834-8976, on this 5th day of October, 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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