

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC05-2006

FADY SARSOUR,

Petitioner,

vs.

THE STATE OF FLORIDA,

Respondent.

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ON PETITION FOR DISCRETIONARY REVIEW

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**BRIEF OF RESPONDENT ON JURISDICTION**

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**TABLE OF CONTENTS**

TABLE OF CITATIONS . . . . .	ii
STATEMENT OF THE CASE AND FACTS . . . . .	1
SUMMARY OF ARGUMENT . . . . .	2
ARGUMENT . . . . .	3
THE ORDER OF THE LOWER COURT DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH THE DECISION OF EITHER THIS COURT OR ANOTHER DISTRICT COURT OF APPEAL.	
CONCLUSION . . . . .	5
CERTIFICATE OF SERVICE . . . . .	5
CERTIFICATE REGARDING FONT SIZE AND TYPE . . . . .	6

**TABLE OF CITATIONS**

<u>Case</u>	<u>Page</u>
Martin v. State, 833 So. 2d 756 (Fla. 2002) . . . . .	3
Reaves v. State, 485 So. 2d 829 (Fla. 1986) . . . . .	3
 <u>Other Authorities</u>	
Fla.R.App.P. 9.030(A)(2)(A)(iv) . . . . .	3

### STATEMENT OF THE CASE AND FACTS

Fady Sarsour filed a petition for writ of habeas corpus seeking a belated appeal in Third District Court of Appeal case no. 3D05-1786. On August 15, 2005, the Third District issued an unpublished order which set forth, in its entirety, the following:

Following review of the petition for writ of habeas corpus seeking belated appeal, it is ordered that said petition is hereby denied. As per the petitioner's own motion, he received a copy of the trial court's order denying his motion for post-conviction relief on January 13, 2005.

See Appendix A to Petitioner's Brief on Jurisdiction. On September 30, 2005, the Third District issued an order denying a motion for rehearing. That order, set forth, in its entirety, the following: "Upon consideration, petitioner's motion for rehearing or clarification is hereby denied." See Appendix B to Petitioner's Brief on Jurisdiction. Neither order included any other facts or citations of authority.

**SUMMARY OF ARGUMENT**

The order of the lower court, denying the petition for belated appeal, does not expressly and directly conflict with any decision of either this Court or another District Court of Appeal. This Court should therefore deny the petition for discretionary review.

**ARGUMENT**

THE ORDER OF THE LOWER COURT DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH THE DECISION OF EITHER THIS COURT OR ANOTHER DISTRICT COURT OF APPEAL.

This Court's discretionary review jurisdiction may be based on "decisions of district courts 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." Rule 9.030(a)(2)(A)(iv), Florida Rules of Appellate Procedure (emphasis added). Sarsour seeks review of an order of the Third District Court of Appeal; not a "decision" of the Third District Court of Appeal. This Court, in Martin v. State, 833 So. 2d 756, 758 (Fla. 2002), appears to have questioned whether such orders qualify as decisions subject to discretionary review:

This is Martin's second timely petition for discretionary review. The "decision" under review in this case was a rather long, unpublished order denying five motions Martin had filed in the Fourth District Court of Appeal.

Even if such an order can constitute a "decision" subject to discretionary review, due to the absence of any facts, analysis or case law in the order under review, the Petitioner herein can not establish any express and direct conflict with a decision of another district court of appeal or of this Court. In Reaves v. State, 485 So. 2d 829, 830 at n. 3 (Fla. 1986), this Court observed that express and direct conflict is limited

to that which is contained within the four corners of the lower court's decision.

Absent any facts in the lower court's decision, no basis exists for finding any express and direct conflict.

**CONCLUSION**

Based on the foregoing, the petition seeking discretionary review should be denied.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief of Respondent on Jurisdiction was mailed this \_\_\_ day of November, 2005 to FADY SARSOUR, DC# 984381, Hardee Correctional Institution, 6901 State Road 62, Bowling Green, Florida 33834.

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RICHARD L. POLIN

**CERTIFICATE REGARDING FONT SIZE AND TYPE**

The undersigned attorney hereby certifies that the foregoing Brief of Respondent on Jurisdiction was typed in Courier New, 12-point type.

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RICHARD L. POLIN