

IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. SC 05-2210

BARRY ANDERSON,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

RESPONDENT'S BRIEF ON JURISDICTION

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TABLE OF CONTENTS

TABLE	OF
CITATIONS.....	ii
PRELIMINARY	STATEMENT
.....	1
STATEMENT OF THE CASE AND FACTS	
.1	
SUMMARY	OF
	THE
ARGUMENT.....	2
ARGUMENT.....	
.3	
THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH DECISION OF OTHER DISTRICT COURTS OF APPEAL OF THIS STATE.	
CONCLUSION.....	
5	CERTIFICATE OF TYPE
SIZE.....	6
CERTIFICATE	OF
SERVICE.....	6

TABLE OF AUTHORITIES

STATE CASES

Topps v. State, 865 So. 2d 1253 (Fla. 2004) 3, 4

RULES

Fla. R. App. P. 9.210 6

PRELIMINARY STATEMENT

Petitioner was the Defendant and Respondent was the prosecution in the Criminal Division of the Circuit Court of the Seventeenth Judicial Circuit, in and for Broward 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 Petitioner may also be referred to as the State.

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

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 order sought to be reviewed. A copy of the order is contained in the appendix to this brief.

SUMMARY OF THE ARGUMENT

The opinion of the district court is not in direct and express conflict with any decision from any District Court of Appeal in this State. Therefore, Petitioner has failed to show this Court has jurisdiction to review the opinion of the district court, and as such this Court should decline to review this cause on the merits.

ARGUMENT

THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH DECISION OF OTHER DISTRICT COURTS OF APPEAL OF THIS STATE.

Petitioner in this case argues that the Fourth District Court of Appeal order, denying his petition for writ of habeas corpus as successive, is in error. Petitioner claims that the unelaborated order of the Fourth District Court of Appeal expressly and directly conflicts with this Court's decision in Topps v. State, 865 So. 2d 1253 (Fla. 2004).

In Topps, 865 So. 2d at 1256, this Court addressed the lack of uniformity among the district courts on the issue of whether an unelaborated denial of an extraordinary writ petition should be considered a denial on the merits. This Court found as follows:

To ensure that all issues are uniformly given due consideration, henceforth unelaborated orders denying relief in connection with all extraordinary writ petitions issued by Florida courts shall not be deemed to be decisions on the merits which would later bar the litigant from presenting the issue under the doctrines of res judicata or collateral estoppel unless there is a citation to authority or other statement that clearly shows that the issue was considered by the court on the merits and relief was denied.

Id. at 1258.

In this case, petitioner cannot establish conflict

jurisdiction. This Court's decision in Topps does not bar a court from issuing an unelaborated order, rather it stands for the proposition that an unelaborated order does not constitute a decision on the merits.

Furthermore, a review of the order entered by the Fourth District Court of Appeal indicates that the Court, did not enter an unelaborated order, rather the Court dismissed the petition as successive and cited to controlling authority (Appendix). Moreover, the Court stated that the issue presented in the petition had been previously raised by petitioner and was denied on the merits (Appendix). Hence, the order of the Fourth District Court of Appeal does not constitute an unelaborated order as alleged by the petitioner. Accordingly, it is respectfully submitted that this Court to decline review of the lower court's decision.

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 "Petitioner's Brief on Jurisdiction" has been furnished to: Barry Anderson, DC # 040918, Columbia Correctional Institution, 216 SE Corrections Way, Lake City, Fl 32025 this ____ day of _____, 2005

MELANIE DALE SURBER

CERTIFICATE OF TYPE SIZE AND STYLE

In accordance with Fla. R. App. P. 9.210, the undersigned hereby certifies that the instant brief has been prepared with 12 point Courier New Type.

MELANIE DALE SURBER

APPENDIX