

IN THE SUPREME COURT OF FLORIDA

TERRY HAMILTON,

Petitioner,

v.

SC06-_____

L.T. CASE NO. 1D05-1325

STATE OF FLORIDA,

Respondent.

_____ /

ON PETITION FOR DISCRETIONARY REVIEW
OF A DECISION OF THE DISTRICT COURT OF APPEAL
FIRST DISTRICT OF FLORIDA

PETITIONER'S BRIEF ON JURISDICTION

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PETITIONER'S BRIEF ON JURISDICTION

PRELIMINARY STATEMENT

Petitioner as referred to in this brief was the defendant in the trial court and the appellant in the lower tribunal. Attached hereto as Appendix A is the decision of the lower tribunal, which was reported as Hamilton v. State, 31 Fla. L. Weekly D1080 (Fla. 1st DCA April 18, 2006).

STATEMENT OF THE CASE AND FACTS

Petitioner was tried in the circuit court for Duval County and convicted of the offenses of attempted sexual battery, resisting an officer without violence, battery, kidnapping and false imprisonment. The alleged victim of the attempted sexual battery and kidnapping did not testify at trial. Over Petitioner's objection based upon Crawford v. Washington, 541 U.S. 36 (2004), the state introduced the expert testimony of Jodi Yaver who characterized herself as a forensic sexual assault examiner. Petitioner argued that Yaver's testimony of alleged statements by the alleged victim violated his federal constitutional right of confrontation as set forth in Crawford v. Washington. Over Petitioner's objection, Ms. Yaver testified that the alleged victim told her, prior to medical examination:

Basically, she told me that a stranger at the Smokers Express called her over to talk to her in a parking lot. And she remembers it was near the Hardees in Riverside. He hit her and drug her to the back of a building and, he raped me, is what she told me. She said that he had hit her with his fist. She described penile/vaginal intercourse only and she said there was no condom used.

Petitioner testified in his own defense. He said he was acquainted with the alleged victim, whom he described as a cocaine whore. Petitioner said his accuser agreed to have sex

with him in exchange for cocaine. His accuser, however, attempted to steal some additional cocaine from him and a struggle ensued in a secluded alleyway. While the two were wrestling over a piece of crack cocaine, the police arrived and caught appellant, literally, with his pants down. Appellant claimed that the woman accused him of rape simply so the police would not arrest her for a drug offense.

On direct appeal Petitioner argued, inter alia, that the trial judge erred prejudicially in admitting his accuser's alleged statements through the testimony of Ms. Yaver, in derogation of his right to confront the witnesses against him as set forth in Crawford v. Washington. The district court issued a written opinion holding that Petitioner's dual convictions for kidnapping and false imprisonment arising from the same incident violated double jeopardy. As to the remaining issues on appeal, the district court wrote:

We otherwise affirm the judgment and sentence without further discussion.

Appendix A.

Petitioner filed a timely motion for clarification. The district court summarily denied Petitioner's motion for clarification by order dated May 30, 2006. A timely notice of discretionary review was filed on June 19, 2006.

SUMMARY OF THE ARGUMENT

In its written opinion, the district court stated: **We** otherwise affirm the judgment and sentence without further discussion.**@** Such language constituted an **Aexpress@** rejection of Petitioner's confrontation clause argument and a construction of the Sixth Amendment of the United States Constitution. The written opinion of the district court, therefore, conferred discretionary jurisdiction upon this Court.

In the alternative, the district court's opinion expressly construed the double jeopardy clause of the state or federal constitution. This Court, therefore, has jurisdiction over the entire case.

ARGUMENT

ISSUE PRESENTED

THE DECISION OF THE DISTRICT COURT, EXPRESSLY REJECTING PETITIONER=S ARGUMENT BASED ON THE CONFRONTATION CLAUSE, WAS ADEQUATE TO CONFER DISCRETIONARY JURISDICTION ON THIS COURT.

This court has discretionary jurisdiction because the district court=s opinion *expressly* construed the Sixth Amendment=s Confrontation Clause. Article V, section 3(b)(3), of the Florida Constitution grants the Florida Supreme Court the discretionary jurisdiction to review any decision of a district court of appeal that *expressly* construes a provision of the state or federal constitution,.... See also, Fla.R.App.P. 9.030(a)(2)(A)(ii). This Court recently reaffirmed the long standing principle that a per curiam affirmance (no written opinion) does not confer discretionary jurisdiction on the Court because such an affirmance does not declare a statute invalid. Jackson v. State, 926 So. 2d 1262 (Fla. 2006). In Jenkins v. State, 385 So. 2d 1356 (Fla. 1980), this Court noted that the term *express* means *to represent in words*. Jenkins v. State, 385 So. 2d at 1359.

The present case is distinguishable from Jackson v. State and Jenkins v. State where the lack of jurisdiction was based upon the complete absence of a judicial opinion. In the present

case, by contrast, the district court when presented with a federal constitutional question expressed its rejection of the appellant's contention by the written representation: **We** otherwise affirm the judgment and sentence without further discussion.® Such written expression constituted a construction of the Sixth Amendment of the United States Constitution and thereby conferred jurisdiction on this Court.

Moreover, if there exists an ambiguity in determining whether the district court's written expression confers jurisdiction upon this court, the ambiguity should be resolved in favor a grant of jurisdiction. Constitutional provisions should be construed broadly to effect their intent. Coastal Florida Police Benevolent Assoc. v. Williams, 838 So. 2d 543, 548 (Fla. 2003)(citing Fla. Soc'y of Ophthalmology v. Fla. Optometric Ass'n, 489 So. 2d 1118, 1119 (Fla. 1986)); see also, Florida Hospital Waterman, Inc. v. Buster, 31 Fla. L. Weekly D763 (Fla. 5th DCA, March 10, 2006). The intent of the constitutional provision here at issue is to confer discretionary jurisdiction on this Court where a district court expressly rules on a constitutional question. That intent should not be narrowly construed, particularly where the grant of jurisdiction is merely discretionary rather than mandatory.

There is an alternative basis for the exercise of discretionary jurisdiction. The district court opinion expressly construes a provision of either the state or federal constitutional prohibition against double jeopardy. This Court, therefore, possesses discretionary jurisdiction to review not only the double jeopardy issue but the entire case. Jacobson v. State, 476 So. 2d 1282, 1285 (Fla. 1985)(citing Savoie v. State, 422 So. 2d 308 (Fla. 1982)).

This Court should exercise jurisdiction. The confrontation issue is exceptionally important, affects the fundamental liberty interest of criminal defendants and is likely to recur.

CONCLUSION

Based upon the foregoing arguments and authorities, Petitioner requests that this Court accept review.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by mail to Daniel A. David, Assistant Attorney General, Criminal Appeals Division, The Capitol, PL-01, Tallahassee, Florida, 32399-1050, and to appellant, Terry Hamilton, #788941 Jackson C.I., 5563 10th Street, Malone, FL 32445 on this ____ day of June, 2006.

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief has been prepared using Courier New 12 point font in compliance with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

Respectfully submitted,

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