IN THE SUPREME COURT OF FLORIDA

Case No. SC06-1253

Petition for review of
District Court of Appeal Case No. 4D05-3305

CYNTHIA SCHWARTZ,

Petitioner,

v.

STATE OF FLORIDA, et al.,

Respondents.

RESPONDENTS' JURISDICTIONAL ANSWER BRIEF

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STATEMENT OF THE CASE AND FACTS

Petitioner's statement of the case and facts cites facts not present within the four corners of the Fourth District's majority opinion. These facts cannot be considered by this Court for purposes of jurisdictional review and must be disregarded. As this Court has stated, "the only facts relevant to our decision to accept or reject such petitions are those facts contained within the four corners of the decisions allegedly in conflict." *Reaves v. State*, 485 So. 2d 829, 830 (Fla. 1986). "[W]e are not permitted to base our conflict jurisdiction on a review of the record or on facts recited only in dissenting opinions. Thus, it is pointless and misleading to include a comprehensive recitation of facts not appearing in the decision below, with citations to the record, as petitioner provided here." Id. at 830, n.3.

The Fourth District succinctly set forth the facts as follows:

> Appellant, Cynthia Schwartz, was charged criminally with trafficking in cocaine. As part of a substantial assistance plan, appellant entered into a Polygraph Agreement and Stipulation with the state, where she agreed to submit to a polygraph test. She also agreed that the test and anything pertaining to the test "shall be received in evidence either on behalf of the State of Florida or on [her] behalf in the [criminal action against her] or any retrial of same." She waived her constitutional privilege against self-incrimination as it pertained to the results of the test and stipulated that "the focus of the examination in this case is whether or not" she was truthful in her sworn statement to the assistant

> state attorney concerning the cocaine.
>
> Appellant submitted to the test and did not pass. In anticipation of the results being used against her, she thereafter filed a civil suit against the state asserting that the agreement was unenforceable and sought to permanently enjoin the state from using the test results against her in the criminal action. She also filed a Motion for Entry of Temporary Injunction, which the trial court dismissed.

Schwartz v. State, 927 So. 2d 1003 (Fla. 4th DCA 2006).

The Fourth District affirmed the trial court, holding that "any attempt by the trial court, sitting as a court of equity, to preempt the criminal court's rulings or to otherwise control the proceedings in a criminal court by the issuance of an injunction would have been inappropriate. It is for the judge in the criminal court to consider appellant's arguments at the appropriate time and decide whether to invalidate the agreement." Id.

SUMMARY OF ARGUMENT

The Fourth District's decision does not conflict with either case cited by Petitioner. Petitioner improperly relies on the concurring opinion in *Metro-Dade Police Dep't of Dade County v. Hidalgo*, 601 So. 2d 1259 (Fla. 3d DCA 1992), to establish conflict and the decision below does not conflict with *City of Gainesville v. State of Florida, Dep't of Transportation*, 778 So. 2d 519 (Fla. 1st DCA 2001), because the cases address different questions of law.

ARGUMENT

THE FOURTH DISTRICT'S DECISION DOES NOT CONFLICT WITH DECISIONS OF OTHER DISTRICT COURTS OF APPEAL

Petitioner first alleges conflict with *Metro-Dade Police Dep't of Dade County v. Hidalgo*, 601 So. 2d 1259 (Fla. 3d DCA 1992). Petitioner, however, relies on the concurring opinion in *Metro-Dade* to establish conflict. As is well-established, this Court may only look to the majority opinion in determining whether jurisdiction is warranted. *See Jenkins v. State*, 385 So. 2d 1356, 1359 (Fla. 1980) ("the language and expressions found in a dissenting or concurring opinion cannot support jurisdiction under section 3(b)(3) because they are not the decision of the district court of appeal"). Petitioner does not allege conflict with the majority opinion in *Metro-Dade* and thus this Court should decline to exercise jurisdiction.[1]

Second, Petitioner alleges conflict with *City of Gainesville v. State of Florida, Dep't of Transportation*, 778 So. 2d 519 (Fla. 1st DCA 2001). Petitioner alleges the Fourth District ignored the principle established in *City of Gainesville* on the standard to be applied on a motion to dismiss and instead established its own standard of review. While *City of Gainesville* does set forth general principles

[1] In fact, the *Metro-Dade* majority opinion dismissed the appeal as untimely. 601 So. 2d at 1259.

related to the standard to be applied on a motion to dismiss, the holding in that case does not conflict with the decision below. *See id.* at 522 ("For purposes of ruling on the motion the dismiss, the trial court was obliged to treat as true all of the amended complaint's well-pleaded allegations . . . and to look no further than the amended complaint and its attachments.") The First District held in *City of Gainesville* that Florida law allows a city to collect utility fees for managing stormwater runoff. *Id*. at 522-23. This in no way conflicts with the Fourth District's holding below that "any attempt by the trial court, sitting as a court of equity, to preempt the criminal court's rulings or to otherwise control the proceedings in a criminal court by the issuance of an injunction would have been inappropriate." *Schwartz*, 927 So. 2d at 1003. This Court only has jurisdiction to review a district court's decision when that decision expressly and directly conflicts with a decision of another district court on the same question of law. *Jenkins*, 385 So. 2d at 1359. Also, nothing in the decision below indicates that the Fourth District established its own standard of review with respect to the motion to dismiss or ignored the appropriate standard of review.

Finally, because neither of the cases alleged to be in conflict with the decision below present a basis for this Court's jurisdiction, Petitioner's argument regarding the importance of addressing substantial assistance agreements is

irrelevant.

CONCLUSION

Petitioner has presented no valid basis for the exercise of this Court's jurisdiction in this case. Because this Court lacks jurisdiction to review the district court's opinion, Respondents respectfully request that this Court enter an order denying review.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by U.S. Mail, postage prepaid, to Kenneth E. Cohen, Esq., and Stewart Valencia, Esq., Holman, Cohen, & Valencia, 2739 Hollywood Boulevard, Hollywood, Florida 33020, this ____ day of August, 2006:

_____
LEAH L. MARINO
Deputy Solicitor General

CERTIFICATE OF COMPLIANCE

Pursuant to Fla. R. App. P. 9.210(a)(2), I certify that this computer-generated brief is prepared in Times New Roman 14-point font and complies with the font requirement of Rule 9.210, Florida Rules of Appellate Procedure.

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LEAH L. MARINO
Deputy Solicitor General