

IN THE SUPREME COURT OF THE STATE OF FLORIDA

ROBERT JIMINEZ,

Petitioner,

v.

CASE NO. SC06-1296  
5DCA CASE NO. 5D05-4170

STATE OF FLORIDA,

Respondent.

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ON DISCRETIONARY REVIEW FROM THE  
FIFTH DISTRICT COURT OF APPEAL

JURISDICTIONAL BRIEF OF RESPONDENT

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OTHER AUTHORITIES:

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## STATEMENT OF CASE AND FACTS

Respondent objects to and rejects Jiminez's statement of the case and facts. As this court held in *Reaves v. State*, 485 So. 2d 829, 830 n.3 (Fla. 1986), "[t]he 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." Jiminez's statement of the case and facts contains facts not found within the decision of the Fifth District Court of Appeal. This is improper.

Respondent provides the following:

In affirming the denial of Jiminez's motion to correct illegal sentence and prohibiting Jiminez from filing future *pro se* pleadings, the Fifth District Court of Appeal issued the following opinion:

Robert Jiminez appeals the denial of his fourth rule 3.800(a) motion to correct illegal sentence. In this successive motion, Jiminez argued he was sentenced with an improperly calculated scoresheet. The trial court properly ruled he was not entitled to relief. We affirm with an opinion that prohibits Jiminez from filing *pro se* pleadings.

Jiminez was convicted of aggravated child abuse for performing what he called his "pile driver" wrestling move upon his girlfriend's 3-year-old daughter. She was taken to the hospital after she was found on the floor, unconscious, with labored breathing. Hospital tests revealed one or two "bleeds" on her brain. At trial, a pediatric neurosurgeon testified that the toddler's head

injury was potentially life threatening caused by “non-accidental trauma.” The trial court reviewed his sentencing scoresheet, adjudicated Jiminez a habitual felony offender, and sentenced him to 15 years’ incarceration based in part on his prior New Jersey convictions. No objection to his prior convictions was raised at sentencing nor was this issue raised in his initial appeal. His conviction was affirmed. See *Jiminez v. State*, 767 So. 2d 1224 (Fla 5th DCA 2000).

Since that time, Jiminez has filed numerous pleadings contesting the New Jersey convictions used to habitualize him. This court issued a *Spencer* show cause order “why he should not be denied further pro se access to the Court for any proceeding to further attack the conviction and sentence rendered below in Volusia County, Seventh Judicial Circuit Court, case number 98-1189-CFWAS.” Appellant responded he was entitled to make this successive claim of an “illegal sentence based on procedural due process.”

At this point, Jiminez is abusing the judicial process by his successive attacks upon his conviction and habitual felony offender sentence. In order to conserve judicial resources, we prohibit Robert Jiminez, a/k/a Robert Jimenez, from filing with this Court any further pro se pleadings concerning Volusia County, Seventh Judicial Circuit Court Case No. 98-1189 CFAWS. The Clerk of this Court is directed not to accept any further pro se filings concerning this case. Any further pleadings regarding this case will be summarily rejected by the Clerk, unless they are filed by a member in good standing of The Florida Bar. The Clerk is further directed to forward a certified copy of this opinion to the appropriate institution for consideration of disciplinary procedures.

*Jiminez v. State*, 929 So. 2d 56 (Fla. 5<sup>th</sup> DCA 2006) (footnote, citations and statute

omitted).

## SUMMARY OF ARGUMENT

This court should decline to accept jurisdiction in this case. The decision of the Fifth District did not expressly declare a state statute constitutional. Rather, the court merely applied section 944.279(1), Fla.Stat.(2005). Review should be denied.

## ARGUMENT

THIS COURT IS WITHOUT JURISDICTION TO REVIEW THE INSTANT CASE, AS THE FIFTH DISTRICT COURT OF APPEAL DID NOT EXPRESSLY DECLARE A STATE STATUTE CONSTITUTIONAL.

Jiminez requests this court accept jurisdiction of the instant case by claiming that the decision in *Jiminez, supra*, expressly declares a state statute valid. This court is without jurisdiction. The Fifth District's decision did not find section 944.279(1) valid. Rather, after giving Jiminez an opportunity to respond and then barring Jiminez from filing any future pro se pleadings, the Fifth District applied the statute and forwarded "a certified copy of [the] opinion to the appropriate institution for consideration of disciplinary procedures." *Jiminez*, at 57. There is no basis for this court to accept jurisdiction. This court should decline to accept jurisdiction in this case.



CONCLUSION

Based on the arguments and authorities presented herein, respondent requests this honorable court decline to accept jurisdiction in this case.

Respectfully submitted,  
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Answer Brief of Appellee has been furnished by U.S. Mail to Robert Jiminez, #V08902, Tomoka Correctional Institution, 3950 Tiger Bay Road, Daytona Beach, Florida 32124-1098, this \_\_\_\_ day of August, 2006.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the font used in this brief is 14-point, Times New Roman.

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Bonnie Jean Parrish