

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v.

Case No. SC06-612

LARRY BRAY SADLER,

Respondent.

_____ /

ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

AMENDED JURISDICTIONAL BRIEF OF PETITIONER

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STATEMENT OF FACTS

The relevant facts are set forth in the opinion of the district court below:

Pursuant to Florida Rule of Criminal Procedure 3.190(c)(4)] , Appellee filed a motion to dismiss in which he alleged that the property he was accused of taking was actually his own property. The State failed to file a traverse.

A hearing was held during which the following transpired:

THE CLERK: Larry Sadler, 2004-498.

THE COURT: Yes, sir?

MR. MILITELLO [defense counsel]: Your Honor, approaching the podium is Larry Sadler. Mr. Sadler's case was set for a Motion to Dismiss which is set for today. It's my understanding that the state attorney's office has reviewed the motion and will acknowledge in good faith they cannot traverse the motion.

THE COURT: All right. So let me just turn to the file on Mr. Sadler. It does appear to be a legally sufficient, properly drawn C-4 Motion to Dismiss. Mr. Norville, can the state, in good faith, traverse it?

MR. NORVILLE: No. Your Honor. As a matter of fact, we had the chief of security for the corporation in for deposition, I believe, it was last Friday, and he states that they could not state that the property was - that was taken was, in fact, their property.

THE COURT: Very good. So based upon that, once, again, Mr. Norville, you continue to live up to the highest expectations of a prosecutor, which is to seek justice, not merely convictions. And as such, since there's no good faith traverse, the motion is granted. And, Mr. Sadler, you may go hence without day. Case is dismissed. Thank you, Mr. Militello.

One month after the hearing, the State filed another information charging Appellee with the same criminal conduct alleged in the dismissed case. Appellee again moved to dismiss the charges. This time the State

traversed. At the hearing on the motion, the prosecutor explained that he had not contacted the victim prior to the hearing on Appellee's first motion to dismiss. Since that time, however, he had spoken to the victim and did have a good-faith basis to traverse the motion. The State argued that it was not precluded from refileing the original charges because it had not filed a traverse to the original motion to dismiss.

At the conclusion of the hearing the trial court granted the defense motion stating:

THE COURT: Thank you very much. This is the Court's ruling, Mr. Militello [defense counsel]. I'm going to grant the Motion to Dismiss for the follow [sic] reasons: I find that the dismissal that I granted back in November 4 was with prejudice. It was this Court's intent with prejudice.

. . . .

If I haven't said it at least once, I've said it twice or three times, when I say go hence without day, that reflects back to 30 years of my experience when go hence without day means this case is over for Sadler. That's as far as I'm concerned.

State v. Sadler, 30 Fla. L. Weekly D2843, D2844 (Fla. 5th DCA December 16, 2005)(emphasis in original).

SUMMARY OF ARGUMENT

This Court should accept jurisdiction in this case because there is an express and direct conflict. The district court below concluded that a prior dismissal of charges pursuant to a motion filed under Florida Rule of Criminal Procedure 3.190(c)(4), which the State did not traverse, precluded the refiling of charges. The decision below expressly and directly conflicts with State v. Davis, 243 So.2d 587 (Fla. 1971); State v. Sacco, 849 So.2d 452 (Fla. 4th DCA 2003); and State v. Gellis, 375 So.2d 885 (Fla. 3d DCA 1979).

ARGUMENT

THIS COURT SHOULD ACCEPT
JURISDICTION IN THIS CASE BASED UPON
AN EXPRESS AND DIRECT CONFLICT.

This Court has jurisdiction under article V, section (3)(b)(3) of the Florida Constitution where a decision of a district court "expressly and directly conflicts" with a decision of this Court or another district court. This Court has repeatedly held that such conflict must be express and direct, that is, "it must appear within the four corners of the majority decision." Reaves v. State, 485 So. 2d 829, 830 (Fla. 1986).

In the decision below, the district court found that because the trial court had previously dismissed a prior identical information pursuant to motion filed under Florida Rule of Criminal Procedure 3.190(c)(4), which the State did not traverse, the State was barred from refileing those charges. Sadler, 30 Fla. L. Weekly at D2844. The district court below based its ruling on the fact that the prior dismissal was purportedly made with prejudice.

Petitioner, the State of Florida, contends that the decision below expressly and directly conflicts with State v. Gellis, 375 So.2d 885 (Fla. 3d DCA 1979). In Gellis, the defendant filed a motion to dismiss pursuant to Florida Rule of Criminal Procedure 3.190(c)(4) and the State did not traverse the motion. Gellis, 375 So.2d at 886. The trial court granted the motion. The State refiled the same charges and the defendant filed another motion to

dismiss pursuant to Rule 3.190(c)(4). The trial court granted the motion. Id. The Third District Court of Appeal reversed the order granting the motion. The district court found that the law was "well-settled that the State is not barred from re-filing an information on the ground that the identical information has been previously dismissed under Fla.R.Crim.P. 3.190(c)(4)." Id.

The decision below also conflicts with State v. Davis, 243 So.2d 587, 591 (Fla. 1971), which states that, pursuant to Rule 3.190(c)(4), when there are no material factual disputes known to the prosecutor to establish a prima facie case of guilt, the defendant is entitled to a dismissal. "As the dismissal is without prejudice, a new charge may be made if and when the state does have such facts, provided there is not affirmative bar to prosecution." Id.

The Fourth District Court of Appeal followed Davis in State v. Sacco, 849 So.2d 452 (Fla. 4th DCA 2003). There, the prosecutor state he could not, in good faith, go forward with the case which prompted the trial judge to dismiss the case pursuant to Rule 3.190(c)(4). The district court concluded that the dismissal of the murder indictment was without prejudice. Thus, the State could refile charges if or when additional evidence was obtained. Id. at 454.

In all, when the prosecution does not traverse a motion filed pursuant to Rule 3.190(c)4) and the case is dismissed, the

dismissal is without prejudice and the State is not precluded from refileing those same charges. Davis, 243 So.2d at 591; Sacco, 849 So.2d at 454; and Gellis, 375 So.2d at 886. The decision below to the contrary conflicts with Davis, Sacco, and Gellis. Because an express and direct conflict exists, this Court should exercise its discretion and accept jurisdiction in this case.

CONCLUSION

Based on the foregoing argument and authority, the State respectfully requests that this Court accept jurisdiction of 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 Petitioner's amended brief on jurisdiction has been furnished by United States Mail to Paul L. Militello, Esq., counsel for Sadler, 107B West Main Street, Inverness, Florida 34450, this _____ day of May, 2006.

CERTIFICATE OF COMPLIANCE

The undersigned counsel certifies that this brief was typed using 12 point Courier New, a font that is not proportionately spaced.

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APPENDIX

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