

IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. SC 07-1021

**CLEO LECROY,**

Petitioner,

vs.

**STATE OF FLORIDA,**

Respondent.

RESPONDENT'S BRIEF ON JURISDICTION

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PRELIMINARY STATEMENT

Petitioner was the Defendant and Respondent was the prosecution in the Criminal Division of the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach 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 opinion sought to be reviewed. A copy of the opinion is contained in the appendix to this brief.

SUMMARY OF THE ARGUMENT

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. 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, nor is it in conflict with any opinion from this Court.

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.

This Honorable Court has authority pursuant to Article V, Section 3(b)(3) of the *Florida Constitution* (1980) to review a decision of a district court of appeal that **expressly and directly conflicts** with a decision of another district court of appeal or the Supreme Court on the same question of law. See The Florida Bar v. B.J.F., 530 So. 2d 286, 288 (Fla. 1988).

Petitioner in this case argues that the Fourth District Court of Appeal decision expressly and directly conflicts with the following cases: Sanders v. State, 787 So. 2d 264 (Fla. 2d DCA 2001), Sandoval v. State, 884 So. 2d 214 (Fla. 2d DCA 2004), and Shue v. State, 386 So. 2d 1256 (Fla. 5<sup>th</sup> DCA 1980). Contrary to his assertion, however, this Court does not have discretionary jurisdiction pursuant to Florida Rule of Appellate Procedure 9.030.

In this case, the Fourth District Court of Appeal found that the trial court properly conformed the sentence to the pronouncement of the Florida Supreme Court. The Court reasoned that because the trial court had no jurisdiction to do otherwise it properly performed the ministerial act of imposing a life

sentence without a hearing. Lecroy v. State, 954 So. 2d 747 (Fla. 4<sup>th</sup> DCA 2007).

Petitioner's reliance upon Sander's v. State, 787 So. 2d 264 (Fla. 2d DCA 2001) and Sandoval v. State, 884 So. 2d 214 (Fla. 2d DCA 2004), is misplaced. The decision in Sanders, 787 So.2d at 254-265, highlights the difference between reversing for an entirely new penalty phase as was done in Sander's case as opposed to the ministerial act at issue in the instant case. Furthermore, in Sandoval, 787 So. 2d at 216, as in Sanders, the case was also reversed for an entirely new sentencing whereas here, LeCroy's case was not remanded for a new penalty phase, but merely to replace one sentence with another. Nothing else in the case was disturbed. Hence, Petitioner's reliance upon Sanders and Sandoval is wholly misplaced and jurisdiction must be denied..

Additionally, the decision in Shue v. State, 386 So. 2d 1256 (Fla. 5<sup>th</sup> DCA 1980), is wholly distinguishable. In Shue, the case was remanded to impose two life sentences, because the facts adduced below did not warrant the imposition of a death sentence. Shue, 386 So. 2d at 1256; Shue v. State, 366 So. 2d 387,391(Fla. 1978). After some argument at the resentencing hearing, the trial court found that there was no discretion regarding the life sentences pursuant to the mandate of the

Florida Supreme Court. Id. However the Fifth District Court of Appeal, reversed the resentencing and reasoned that the trial court in fact had discretion regarding whether the two life sentences could run consecutive or concurrent to each other and the case was remanded for a new sentencing hearing. Id.

The cases are factually distinguishable because, in Shue there were two separate sentences pending for consideration by the trial court, whereas in this case, the trial court was not permitted to consider any sentence other than the single life sentence it was instructed to impose. Lecroy, 954 So. 2d 747 (Fla. 4<sup>th</sup> DCA 2007; Lecroy v. State, 911 So. 2d 98 (Fla. 2005). Hence, because this case is factually distinguishable from the circumstances in Shue jurisdiction must be denied

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: Margaret Goode-Earnest, Assistant Public Defender, Chief, Appellate Division, 421 Third Street, 6<sup>th</sup> Floor, West Palm Beach, Florida 33401 this \_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
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**