

IN THE SUPREME COURT OF FLORIDA

BLANCHARD ST. VAL,)
)
 Petitioner/Appellant,)
)
vs.)
)
STATE OF FLORIDA,)
)
 Respondent/Appellee.)
_____)

F.S.Ct. CASE NO. _____
4TH DCA CASE NO. 4D06-553

PETITIONER’S BRIEF ON JURISDICTION

ON PETITION FOR DISCRETIONARY REVIEW FROM THE
FOURTH DISTRICT COURT OF APPEAL OF FLORIDA

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PRELIMINARY STATEMENT

Petitioner was the defendant in the Circuit Court of the Fifteenth Judicial Circuit, In and for Palm Beach County, and the appellant in the Fourth District Court of Appeal. Respondent was the prosecution and appellee in the lower courts. In this brief the parties will be referred to as they appear before the Court.

STATEMENT OF THE CASE AND FACTS

Petitioner sought review in the Fourth District Court of Appeal arguing that the trial court erred in sentencing petitioner taking appellant's lack of remorse into consideration. *St. Val v. State*, 32 Fla. L. Weekly D1607 (Fla. 4th DCA June 27, 2007).

The District Court affirmed the judgment and sentence, finding that this is not a case where a defendant was punished for protesting his innocence, nor a case where a court used lack of remorse as an aggravating factor in a first degree murder prosecution, and rejecting that a sentencing judge may never take a defendant's lack of remorse into consideration when imposing sentence. *Id.*, at D1607. The District Court, however, certified conflict with the First District Court of Appeal opinion *K.Y.L. v. State*, 685 So. 2d 1380, 1381 (Fla. 1st DCA 1997), which held that a defendant's lack of contrition or remorse is "a constitutionally impermissible consideration in imposing sentence" in all circumstances. 685 So. 2d at 1381.

On April 13, 2007, petitioner filed notice of intent to invoke the discretionary jurisdiction of this Court, noting that the District Court certified an express and direct conflict with the decision of another District Court. This jurisdictional brief follows.

SUMMARY OF THE ARGUMENT

The opinion of the Fourth District Court of Appeal in *St. Val v. State*, 32 Fla. L. Weekly D1607 (Fla. 4th DCA June 27, 2007) is in express and direct conflict with the opinion of *K.Y.L. v. State*, 685 So.2d 1380, 1381 (Fla. 1st DCA 1997). The Fourth District's opinion in *St. Val* held that and held that a sentencing judge is not always prohibited to take a defendant's lack of remorse into consideration when imposing sentence, whereas the First District in *K.Y.L.*, ruled that a defendant's lack of contrition or remorse is "a constitutionally impermissible consideration in imposing sentence" in all circumstances.

ARGUMENT

THIS COURT HAS JURISDICTION TO REVIEW *ST. VAL V. STATE*, 32 FLA. L. WEEKLY D1607 (FLA. 4th DCA JUNE 27, 2007), WHERE THE DECISION RENDERED WAS PROPERLY CERTIFIED TO BE IN EXPRESS AND DIRECT CONFLICT WITH THAT OF ANOTHER DISTRICT COURT ON THE SAME POINT OF LAW.

Article V, §3(b)(4) of the Florida Constitution vests this Court with jurisdiction to “review any decision of a district court of appeal . . . that is certified by it to be in direct conflict with a decision of another district court of appeal.” *Accord Fla. R. App. P.* 9.030(a)(2)(A)(vi). In *Nielson v. City of Sarasota*, 117 So. 2d 731 (Fla. 1960), this Court discussed “conflict jurisdiction” stating that “[i]t is the announcement of a conflicting rule of law that conveys jurisdiction to us to review the decision of the Court of Appeal.” *Id.*, at 734; *accord Kaigler v. State*, 944 So. 2d 340 (Fla. 2006); *J.I.S. v. State*, 930 So. 2d 587 (Fla. 2006). “The constitutional standard is whether the decisions of the District Court on its face collides with a prior decision of this Court, or another District Court, on the same point of law so as to create an inconsistency or conflict among precedents.” *Kincaid v. World Insurance Co.*, 157 So. 2d 517, 518 (Fla. 1963). The Fourth District Court of Appeal’s decision certifies direct conflict with the decision of another district court.

The District Court ruled in essence that the trial judge was permitted to take into consideration petitioner’s lack of remorse as part of a broader rejection of his characterization of the crime as an accident in which someone just happened to get shot,

but certified that its opinion was in conflict with the opinion of the First District Court of Appeal in *K.Y.L. v. State*, 685 So. 2d 1380, 1381 (Fla. 1st DCA 1997). In *K.Y.L.*, following an adjudicatory hearing, the trial judge found that K.Y.L. and N.L. had committed delinquent acts. Predisposition reports filed by the department recommended community control for both children, but the trial judge elected to commit both children to residential programs. The First District Court of Appeal reversed finding that the judge erred for committing K.Y.L. based upon her lack of contrition and failure to acknowledge wrongdoing because relying on “lack of contrition or remorse is a constitutionally impermissible consideration in imposing sentence.” *Id.* at 1381. The First District Court’s ruling demonstrates that a trial judge may not take into account a party’s lack of remorse at sentencing. Thus, the Fourth District Court has properly certified that its opinion is in conflict with *K.Y.L.*

CONCLUSION

Petitioner has demonstrated the existence of express and direct conflict between the opinion on review and the opinion of another District Court of Appeal and, as a result, this Court should grant the petition for discretionary review.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of Petitioner's Brief On Discretionary Jurisdiction has been furnished to: HEIDI L. BETTENDORF, Assistant Attorney General, Office of the Attorney General, Ninth Floor, 1515 North Flagler Drive, West Palm Beach, Florida 33401-3432, by courier this _____ day of July, 2007.

Counsel for Petitioner

CERTIFICATE OF FONT SIZE

I HEREBY CERTIFY that Petitioner's Brief On Discretionary Jurisdiction has been prepared with 14 point Times New Roman type, in compliance with a *Fla. R. App. P.* 9.210(a)(2), this _____ day of July, 2007.

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