

IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. SC07-2421

GEORGE GREEN,

Petitioner,

- versus -

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 Nineteenth Judicial Circuit, in and for Martin County, Florida. Petitioner was Appellant and Respondent was Appellee in the District Court of Appeal of Florida, Fourth District. In this brief, the parties shall be referred to as they appear before this Honorable Court except that Respondent may also be referred to as the State.

Statement Of The Case And Facts
(limited to the issue of jurisdiction)

Noting that in determining jurisdiction, this Court is limited to the facts apparent on the face of the opinion, Hardee v. State, 534 So. 2d 706, 708 n.1 (Fla. 1988), Respondent will present the facts as they appear in the opinion below:

At the sentencing hearing, Green presented the testimony of a doctor from a Veteran's Administration clinic who testified to Green's mental and physical disabilities and his needs for specialized treatments. Green also testified concerning his medical problems and that during his stay in the county jail, he was given only Tylenol which was ineffective in treating his problems. At the close of the evidence, the trial court concluded that “there was testimony that he is only able to receive in his incarceration Tylenol and not other drugs better to treat him.”

Green v. State, 32 Fla. L. Weekly D2877, *4 (Fla. 4th DCA Dec. 5, 2007).

Petitioner appealed his conviction and sentence to the Fourth District Court of Appeal, and the State cross-appealed Petitioner’s downward departure sentence. By opinion dated December 5, 2007, the Fourth District affirmed Petitioner’s appeal, but reversed the downward departure sentence. Id. The Court held that Petitioner “has the burden of proving that the DOC could not provide the specialized treatment he requires and such proof was not presented to the trial court.” Green v. State, 32 Fla. L. Weekly D2877, *5.

Petitioner now seeks review of the decision of the Fourth District Court of

Appeal based on conflict jurisdiction.

Summary Of The Argument

This Court does not have jurisdiction to review the instant case. The decision of the Fourth District Court of Appeal in the instant case does not expressly and directly conflict with the decision of this Court and other courts of this State. Therefore, this Court should not review the case at bar and should dismiss the Petitioner's case.

Argument

THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL IN THE INSTANT CASE DOES NOT CONFLICT WITH THE DECISION OF ANY OTHER COURT OF THIS STATE.

Petitioner alleges that the decision of the Fourth District Court of Appeal in Green v. State, 32 Fla. L. Weekly D2877 (Fla. 4th DCA Dec. 5, 2007), expressly and directly conflicts with the decision of the Fifth District Court of Appeal in State v. Spioch, 706 So. 2d 32 (Fla. 5th DCA 1998).

Article V, § 3(b)(3) of the Florida Constitution restricts this Court's review of a district court of appeal's decision only if it expressly conflicts with a decision of this Court or of another district court of appeal. It is not enough to show that the district court's decision is effectively in conflict with other appellate decisions. This Court's jurisdiction to review the Fourth District's decision in this case may be invoked by either the announcement of a rule of law which conflicts with a law previously announced by this Court or another district court of appeal or by the application of a rule of law to produce a different result in a case which involves substantially the same facts as a prior case. Mancini v. State, 312 So. 2d 732, 733 (Fla. 1975).

The term "expressly" requires some written representation or expression of

the legal grounds supporting the decision under review. See Jenkins v. State, 385 So. 2d 1356 (Fla. 1980). A decision of a district court of appeal is no longer reviewable on the ground that an examination of the record would show that it is in conflict with another appellate decision; it is reviewable if the conflict can be demonstrated from the district court of appeal's opinion itself. The district court of appeal must at least address the legal principles which were applied as a basis for the decision. See Ford Motor Co. v. Kikis, 401 So. 2d 1341, 1342 (Fla. 1981).

When determining whether conflict jurisdiction exists, this Court is limited to the facts which appear on the face of the opinion. Hardee v. State, 534 So. 2d at 708, n.1; White Constr. Co. v. Dupont, 455 So. 2d 1026 (Fla. 1984). In the past, this Court has held that it would not exercise its discretion where the opinion below established no point of law contrary to the decision of this Court or of another district court of appeal. The Florida Star v. B.J.F., 530 So. 2d 286, 289 (Fla. 1988). "'Conflict between decisions must be express and direct, i.e., it must appear within the four corners of the majority decision.' In other words, inherent or so called 'implied' conflict may no longer serve as a basis for this Court's jurisdiction." State, Department of Health v. National Adoption Counseling Service, Inc., 498 So. 2d 888, 889 (Fla. 1986) (quoting Reaves v. State, 485 So. 2d 829, 830 (Fla. 1986)).

See also School Board of Pinellas County v. District Court of Appeal, 467 So. 2d 985, 986 (Fla. 1985).

In a footnote in its opinion, the Fourth District recognized that in State v. Spioch, 706 So. 2d 32, 36 (Fla. 5th DCA 1998), the Fifth District held that “a lack of available treatment in prison is not required under the statute.” Green v. State, 32 Fla. L. Weekly D2877, *5. Additionally, the Fourth District went on to note that “the Fifth District has held otherwise since its decision in Spioch,” citing State v. Mann, 866 So. 2d 179 (Fla. 5th DCA 2004); State v. Tyrell, 807 So. 2d 122 (Fla. 5th DCA 2002); and State v. Thompson, 754 So. 2d 126 (Fla. 5th DCA 2000).

Since the Fifth District has receded from its holding in Spioch, there can be no direct and express conflict. Accordingly, this Court should decline to review the decision of the Fourth District in this case.

Conclusion

WHEREFORE, based on the foregoing argument and authorities, Respondent respectfully submits that this Court should decline to grant review in the above-styled cause.

Respectfully submitted,

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Certificate Of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to Michael Antinori, Esquire, Assistant Public Defender, Criminal Justice Building, Sixth Floor, 421 Third Street, West Palm Beach, Florida, 33401, this ____ day of January, 2008.

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Certificate Of Type Size And Style

In accordance with Fla. R. App. P. 9.210(a)(2), Respondent hereby certifies that the instant brief has been prepared with Times New Roman 14 point font.

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