

IN THE SUPREME COURT OF FLORIDA

TAMMY HARRIS ,

Petitioner ,

Case No. SC07-429

v.

STATE OF FLORIDA ,

Respondent .

JURISDICTIONAL BRIEF OF RESPONDENT

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PRELIMINARY STATEMENT

Respondent, the State of Florida, was designated the Appellee in the District Court of Appeal (DCA) and the prosecuting authority in the trial court, will be referenced in this brief as Respondent or the State. Petitioner Tammy Harris, the Appellant in the DCA and the defendant in the trial court, will be referenced as Petitioner. Petitioner's Amended Jurisdictional Brief will be referenced herein as "JB," followed by the referenced page number, in parentheses.

STATEMENT OF THE CASE AND FACTS

Petitioner alleges the following in her Statement of the Case and Facts:

Trial was held in the Third Judicial Circuit Court in and for Columbia County, Florida. Tammy L. Harris ("Harris") was given permission to proceed without payment of fees during trial and again on direct appeal due to insolvency.

Harris then appealed the decision of the lower tribunal to the Florida District Court of Appeal (DCA).

(JB 1). It appears that Petitioner is alleging that she had a trial and an appeal, prior to filing another "appeal" in the District Court of Appeal. This appearance, coupled with the fact that Petitioner seems to be challenging a misdemeanor

conviction of disorderly conduct,¹ suggests that Petitioner appealed a county court conviction in the circuit court, and accordingly, that the further "appeal" in the District Court Petitioner is currently challenging was unauthorized. See Fla. R. App. P. 9.030(b)(1)(A) (setting the appeal jurisdiction of the district courts of appeal).² The District Court dismissed the "appeal" before this apparent discrepancy was noticed.³

¹ Section 877.03, Florida Statutes, makes disorderly conduct a second-degree misdemeanor.

² Respondent is aware that the facts in jurisdictional briefs are limited to "those facts contained within the four corners of the decisions allegedly in conflict." Reaves v. State, 485 So.2d 829, 830 (Fla. 1986). However, having reviewed the District Court file of this case, undersigned counsel can represent that Petitioner was in fact tried and convicted in county court on a misdemeanor charge, and appealed the conviction to the circuit court. Petitioner was represented by the Public Defender at trial and on appeal. Petitioner filed a *pro se* "appeal" of the circuit court appellate decision in the District Court, and the circuit court prepared a record on appeal. The District Court was never made aware of the fact that Petitioner was challenging a circuit court appellate decision rather than a felony conviction. While these facts are outside the decision under review, Respondent brings them to this Court's attention to confute the implication in Petitioner's jurisdictional brief that the action in the DCA was a direct appeal of a conviction in circuit court. In the event that this Court grants jurisdiction in this case, the State will be obligated to move to dismiss review based upon these facts.

³ The only review of final orders of a circuit court acting in its appellate capacity is by certiorari, not further direct review. Fla. R. App. P. 9.030(b)(2)(B).

SUMMARY OF ARGUMENT

The appropriate focus upon the operative facts, as contained within the "four corners" of the DCA's decision, reveals no express and direct conflict with this Court or another DCA. Therefore, this Court must dismiss this case for lack of jurisdiction.

ARGUMENT

ISSUE I

IS THE DISTRICT COURT'S ORDER BELOW DISMISSING PETITIONER'S CASE FOR FAILURE TO REPLY TO ITS ORDER TO PAY THE FILING FEE IN EXPRESS AND DIRECT CONFLICT WITH DECISIONS OF THIS COURT AND THE DISTRICT COURTS OF APPEAL? (Restated)

On February 2, 2007, the DCA dismissed Petitioner's case with the following order:

Not having received a proper response to this Court's order of August 1, 2006, requiring appellant to pay the \$300.00 filing fee, the above-styled cause is hereby dismissed.

(JB, App. A).

Petitioner contends that this Court has jurisdiction pursuant to Fla. R. App. P. 9.030(a)(2)(A)(iv), which effectuates Article V, § 3(b)(3), Fla. Const. The constitution permits this Court review a decision of a district court of

appeal that expressly and directly conflicts with a decision of another district court of appeal on the same question of law.

The conflict between decisions "must be express and direct" and "must appear within the four corners of the majority decision." Reaves v. State, 485 So.2d 829, 830 (Fla. 1986). Accord Dept. of Health and Rehabilitative Services v. Nat'l Adoption Counseling Service, Inc., 498 So.2d 888, 889 (Fla. 1986)(rejecting "inherent" or "implied" conflict; dismissed petition). "Neither a dissenting opinion nor the record itself can be used to establish jurisdiction." Reaves at 830.

In addition, it is the "conflict of decisions, not conflict of opinions or reasons that supplies jurisdiction for review by certiorari." Jenkins v. State, 385 So.2d 1356, 1359 (Fla. 1980).

A district court of appeal opinion that is devoid of facts contains no holding that could conflict with another district court of appeal opinion:

[I]n those cases where the district court has not explicitly identified a conflicting decision, it is necessary for the district court to have included some facts in its decision so that the question of law addressed by the district court in its decision can be discerned by this Court.

Persaud v. State, 838 So.2d 529, 532 (Fla. 2003).

Applying these standards, the decision below is not in "express and direct" conflict with any cases. Florida Rules of

Appellate Procedure 9.430(a) sets out the method by which a party may seek review without payment of costs, as follows:

(a) Motion and Affidavit. A party who has the right to seek review by appeal without payment of costs shall, unless the court directs otherwise, file a motion in the lower tribunal, with an affidavit showing the party's inability either to pay fees and costs or to give security therefor. For review by original proceedings under rule 9.100, unless the court directs otherwise, the party shall file the motion and affidavit with the court. If the motion is granted, the party may proceed without further application to the court and without either the prepayment of fees or costs in the lower tribunal or court or the giving of security therefor. Reasons for denying the motion shall be stated in writing. Review of decisions by the lower tribunal shall be by motion filed in the court.

Petitioner does not explain how the DCA failed to apply this rule, or identify any cases of this Court or other District Courts of Appeal that directly and expressly conflict with the order dismissing Petitioner's "appeal." The orders indicate that the Court ordered Petitioner either to obtain an order of insolvency from the lower tribunal (an appropriate order given that Petitioner styled her action as an "appeal"), or to pay the filing fees. It appears that Petitioner did neither.⁴

⁴ To the extent that Petitioner is arguing that the circuit court erroneously denied her request to proceed without payment of fees, it does not appear that Petitioner sought review of that decision by "by motion filed in the [district] court," as required by rule 9.430(a). If Petitioner did file such a motion

Petitioner has failed to demonstrate that the DCA's order dismissing her appeal for failure to pay filing fees directly and expressly conflicted with any decisions of this Court or of another District Court of Appeal. Accordingly, this Court should decline to exercise jurisdiction.

ISSUE II

DID THE DISTRICT COURT RENDER A DECISION WITH REGARD TO AN ALLEGED JURY-INSTRUCTION ERROR THAT EXPRESSLY AND DIRECTLY CONFLICTS WITH DECISIONS OF THIS COURT AND THE DISTRICT COURTS OF APPEAL? (Restated)

Petitioner claims that the decision below conflicts with decisions of other District Courts of Appeal on a matter related to the jury instructions. As stated in the response to Issue I above, the decision in the District Court below dismissed the "appeal" for failure to pay filing fees. The District Court below did not render a "decision" at all with respect to the claimed jury-instruction error. As the conflict Petitioner alleges does not "appear within the four corners of the majority decision," Reaves, supra, this Court should decline to exercise jurisdiction.

and the District Court denied the motion, this denial does not appear to be the basis for the instant petition for review.

ISSUE III

DOES THE DISTRICT COURT'S ORDER BELOW
PRESENT A QUESTION OF GREAT PUBLIC
IMPORTANCE? (Restated)

Petitioner claims that the filing-fee issue raised in Issue I, and the alleged jury-instruction error raised in Issue II, constitute matters of "great public importance," and asserts this fact as a separate basis for review of these issues. Petitioner also appears to suggest that her conviction for disorderly conduct was erroneous and likewise raises a matter of "great public importance."

This Court has discretionary jurisdiction to review decisions of district courts of appeal that "pass upon a question certified to be of great public importance." Fla. R. App. P. 9.030(a)(2)(A)(v). The District Court dismissed the cause for failure to pay the filing fee; it did not certify any questions to be of great public importance. Petitioner has failed to demonstrate that this Court has jurisdiction to review on this basis.

ISSUE IV

DOES THIS COURT HAVE JURISDICTION TO REVIEW
PETITIONER'S DOUBLE-JEOPARDY CLAIM?
(Restated)

Petitioner claims that the State failed to file an answer brief in her appeal for 17 months, and that "double jeopardy" attached after the circuit court dismissed the appeal. Petitioner does not assert any jurisdictional basis for review of this claim, and the State can see none. Petitioner has failed to demonstrate that this Court has jurisdiction to review this claim.

CONCLUSION

Based on the foregoing reason, the State respectfully requests this Honorable Court decline to exercise jurisdiction.

SIGNATURE OF ATTORNEY AND CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to Tammy Harris, Post Office Box 1624, Lake City, Florida 32056-1624, by MAIL on June 5, 2007.

Respectfully submitted and served,

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the font requirements of Fla. R. App. P. 9.210.

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