

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC07-526

CHARLES EATO,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

* * * * *

ON PETITION FOR DISCRETIONARY REVIEW
FROM THE THIRD DISTRICT COURT OF APPEAL

* * * * *

RESPONDENT'S BRIEF ON JURISDICTION

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INTRODUCTION

The Respondent, the State of Florida, was the appellee in the Third District Court of Appeal and the prosecution in the trial court of the Eleventh Judicial Circuit, in and for Miami-Dade County. The Petitioner was the appellant and the defendant, respectively in the lower courts. In this brief, the parties will be referred to as they appear before this Honorable Court.

The symbol "A" refers to the Appendix attached to this jurisdictional brief, which solely includes a conformed copy of the district court's opinion. Unless otherwise indicated, all emphasis has been supplied by Respondent.

STATEMENT OF THE CASE AND FACTS

Respondent cannot accept Petitioner's statement of the case and facts appearing on page 3 of his jurisdictional brief due to its argumentative nature and, more importantly, the fact that Petitioner's Statement refers to matters beyond the four corners of the Third District's instant opinion, in violation of this Court's directive in Reaves v. State, 485 So. 2d 829, 830, n. 3 (Fla. 1986), that, "The only facts relevant to our decision to accept or reject such petitions are those facts contained within the four corners of the decisions allegedly in conflict." Therefore, Respondent sets forth the following statement of the case and facts pertinent to the jurisdictional issue before this Court:

The order of the Third District Court of Appeal, dated February 8, 2007 (A. 1), stated, in its entirety, the following:

Appellant is deemed insolvent and may proceed in forma pauperis for purposes of this cause.

Upon this Court's own motion, it is ordered that the above styled appeal is hereby dismissed under Logan v. State, 846 So. 2d 472 (Fla. 2003). COPE, C.J., and CORTINAS and ROTHENBERG, JJ., concur.

Appellant's motion to supplement the record is moot.

Thereafter, on March 19, 2007, Petitioner filed a Motion for Issuance of a Certificate of Appealability, which this Court treated as a notice to invoke the discretionary jurisdiction of this Court. Following the service of Petitioner's amended jurisdictional brief on April 30, 2007, this brief followed.

SUMMARY OF THE ARGUMENT

Petitioner has failed to demonstrate that the order of the Third District Court of Appeal expressly and directly conflicts with a decision of another district court of appeal or of this Court on the same question of law, or that it falls under any of the subdivisions provided in Fla. R. App. P. 9.030(a)(2), or Art. V, Section 3(b)(3), Fla. Const. (1980), for review by this Court. Indeed, since the district court's order merely dismissed Petitioner's appeal, without any explanation of the reason for the dismissal, it does not present this Court with a decision in which express and direct conflict can be found. Thus, this Court should decline to exercise discretionary jurisdiction in this matter.

ARGUMENT

POINT I

THIS COURT SHOULD DECLINE DISCRETIONARY JURISDICTION IN THIS CAUSE SINCE THE DECISION BELOW DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH A DECISION OF ANOTHER DISTRICT COURT OF APPEAL OR OF THIS COURT ON THE SAME QUESTION OF LAW.

Petitioner seeks review through conflict jurisdiction pursuant to Article V, Section 3(b)(3), Fla. Const. (1980) and Fla. R. App. P. 9.030(a)(2)(A)(iv), which provides that the discretionary jurisdiction of the Supreme Court may be sought to review a decision of a district court of appeal which expressly and directly conflicts with a decision of another district court of appeal or of the Supreme Court on the same question of law. Here, Petitioner presents no legitimate basis for the invocation of this Court's discretionary jurisdiction.

The jurisdictional question before this Court is controlled by this Court's decision in Stallworth v. Moore, 827 So. 2d 974, 977 (Fla. 2002), where this Court instructed that a district court order which merely grants a motion to dismiss and dismisses an appeal, without any explanation of the reason for the dismissal (like the order involved in this case), does not present this Court with a decision in which express and direct

conflict can be found, such that the Court's discretionary jurisdiction can properly be invoked.

In any event, since Petitioner has not demonstrated the existence of any express and direct conflict of decisions within the four corners of the district court's opinion, this Court's jurisdiction has not been established. See Reaves v. State, 485 So. 2d 829, 830 (Fla. 1986).

CONCLUSION

Wherefore, based upon the foregoing argument and authorities cited herein, Respondent respectfully requests that this Honorable Court DECLINE to accept discretionary jurisdiction of this cause.

Respectfully submitted,

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CERTIFICATE OF SERVICE AND FONT COMPLIANCE

I HEREBY CERTIFY that a true and correct copy of the foregoing Respondent's Brief on Jurisdiction was furnished by U.S. Mail to Charles Eato, Jail#03-0006615, Miami-Dade County Jail, 1321 NW 13th Street, Miami, FL 33125, on this ____ day of May, 2007, and that the 12 point Courier New font used in this brief complies with the requirements of Fla. R. App. P. 9.210(a)(2).

DOUGLAS J. GLAID
Senior Assistant Attorney General

APPENDIX

