

IN THE SUPREME COURT OF THE STATE OF FLORIDA

EDMUND WASHINGTON,

Petitioner,

v.

CASE NO. SC08-1215

STATE OF FLORIDA,

Respondent.

_____ /

ON DISCRETIONARY REVIEW FROM THE
FIFTH DISTRICT COURT OF APPEAL

JURISDICTIONAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE AND FACTS

The only facts relevant to this Court in determining whether to accept jurisdiction are those contained within the opinion of the District Court. Respondent, therefore, offers the following as a substitute for Petitioner's statement of the case and facts.

The Fifth District Court's opinion in Washington v. State, 982 So. 2d 1207 (Fla. 5th DCA 2008), provided:

We issued a Spencer [FN1] show cause order directing Edmund Washington to demonstrate "why he should not be denied further pro se access to this Court for any proceeding to further attack the convictions and sentences rendered below...." Washington's response was simply to file a notice of voluntary dismissal. A reviewing court has discretion to retain jurisdiction and proceed with the appeal even where a notice of voluntary dismissal is timely filed. State v. Schopp, 653 So. 2d 1016 (Fla. 1995). We have decided to proceed with this appeal and we find that Washington's appeal is without merit. We further find that Washington has abused the judicial process and should be barred from further pro se filings.

FN1. State v. Spencer, 751 So. 2d 47 (Fla. 1999).

Therefore, in order to conserve judicial resources, we prohibit Washington from filing with this Court any further pro se pleadings concerning Orange County, Ninth Judicial Circuit Case No. 92-CF-1634. The Clerk of this Court is directed not to accept any further pro se filings concerning this case. Any further pleadings regarding this case will be summarily rejected by the Clerk unless they are filed by a member in good standing of the Florida Bar. See Isley v. State, 652 So. 2d 409, 411 (Fla. 5th DCA 1995) ("enough is enough"). The Clerk is further directed to

forward a certified copy of this order to the appropriate institution for consideration of disciplinary proceedings. See § 944.279(1), Fla. Stat. (2007); Simpkins v. State, 909 So. 2d 427, 428 (Fla. 5th DCA 2005).

The Fifth District Court of Appeal affirmed the matter and prohibited further pro se filings. Id.

Petitioner timely invoked the jurisdiction of this Court. Petitioner filed a brief on jurisdiction. Respondent files this brief on jurisdiction in response.

SUMMARY OF ARGUMENT

This Court should decline to accept jurisdiction in the instant case. The Court is limited to the facts contained within the four corners of the decision in determining whether an express and direct conflict exists. On the face of the decision under review, there is no express and direct conflict with any decision of this Court or any district court.

ARGUMENT

ON THE FACE OF THE DECISION IN WASHINGTON v. STATE, INFRA, THERE IS NO EXPRESS AND DIRECT CONFLICT WITH A DECISION OF THIS COURT OR OF ANOTHER DISTRICT COURT. THIS COURT SHOULD THEREFORE DECLINE TO ACCEPT JURISDICTION.

Petitioner seeks discretionary review with this Honorable Court under Article V, Section 3(b)(3) of the Florida Constitution. See also Fla. R. App. P. 9.030(a)(2)(A)(iv). Article V, Section 3(b)(3) provides that the Florida Supreme Court may review a district court of appeal decision only if it "expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law." In Reaves v. State, 485 So. 2d 829, 830 (Fla. 1986), this Court explained:

Conflict between decisions must be express and direct, i.e., it must appear within the four corners of the majority decision. Neither a dissenting opinion nor the record itself can be used to establish jurisdiction.

Reaves, 485 So. 2d at 830, n.3. Additionally, this Court has held that inherent or so-called "implied" conflict may not serve as a basis for this Court's jurisdiction. DHRS v. National Adoption Counseling Service, Inc., 498 So. 2d 888, 889 (Fla. 1986).

Petitioner has failed to demonstrate express and direct conflict between the instant decision of the Fifth District and either Hawkins v. State, 970 So. 2d 342 (Fla. 2007), or Warren v. State, 970 So. 2d 826 (Fla. 2007). Respondent contends no such

conflict exists between the cited cases and the instant opinion.

Neither Hawkins nor Warren interpret, rely upon, or cite to the case of State v. Schopp, 653 So. 2d 1016 (Fla. 1995), which was utilized by the Fifth District in its opinion in Petitioner's case. Inasmuch as the opinions in Hawkins and Warren do not contain any factual or legal analysis, Petitioner is unable to demonstrate any express or direct conflict. Respondent would also note that this Court has vacated its order of dismissal in Warren.

See Warren v. State, SC07-2013 (Fla. 2007) (docket entry dated January 11, 2008; http://jweb.flcourts.org/pls/docket/ds_docket).

Additionally, Schopp provides that "[e]ven where a notice of voluntary dismissal is timely filed, a reviewing court has discretion to retain jurisdiction and proceed with the appeal." State v. Schopp, 653 So. 2d at 1018. Contrary to Petitioner's assertion, it is not necessary for the case to involve an issue of great public importance in order a court to exercise its discretion to retain jurisdiction. No limitation is placed upon this discretionary power.

Petitioner has failed to establish that the Fifth District's opinion in Washington expressly and directly conflicts with any case of this Court or a district court. Jurisdiction should be denied.

CONCLUSION

Based on the arguments and authorities presented herein, Respondent respectfully requests this Honorable Court decline to accept jurisdiction in this case.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Jurisdictional Brief of Respondent has been furnished by U.S. mail to Edmund Washington, *pro se* Petitioner, at Hamilton Correctional Institution - Annex, 11419 S.W. County Road #249, Jasper, Florida 32052-3735, this _____ day of November, 2008.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief was typed in 12 point Courier
New as required by Rule 9.210(a)(2).

Respectfully submitted,

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