

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

FSC Case No.: SC08-1427

vs.

2DCA Case No.: 2D08-922

ALEX RICARDO REEVES,

Respondent.

**On Petition for Review from
the Second District Court of Appeal
State of Florida**

RESPONDENT'S BRIEF ON JURISDICTION

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STATEMENT OF THE CASE AND FACTS

Respondent accepts the Petitioner's Statement of the Case and Facts, however adds the following. The entirety of the District Court's order under review in this cause is as follows:

Petitioner's Petition for Writ of Prohibition seeking review of the denial of the Motion for Disqualification of Judge Richard Luce in Circuit Court case number CRC-00-0135458 is granted as the Petitioner's Motion for Disqualification filed in the Circuit Court is deemed legally sufficient. Pursuant to this order, a successor judge shall be immediately appointed pursuant to Florida Rule of Judicial Administration 2.160. The Circuit Court Clerk shall serve notice of such on this Court within ten days from the date of this order. The stay imposed pursuant to this Court's February 29, 2008, order is lifted.

(Respondent's Appendix, Tab 1).

SUMMARY OF THE ARGUMENT

In Grate v. State, 750 So.2d 625, 626 (Fla. 1999), this Court held that it would not exercise jurisdiction to issue an extraordinary writ upon requested review of a decision of one of the District Courts of Appeals which was issued without an opinion. Following up on Grate, in Gandy v. State, 846 So2d. 1141 (Fla. 2003), this Court clarified that its subject matter jurisdiction pursuant to Article V, §3(b), of the Florida Constitution, will not be invoked when a District Court decision fails to contain some statement indicating that it had expressly addressed a question of law within the four corners of the opinion itself. Since the decision of the Second District Court of Appeal in this matter merely determined that Respondent's Motion for Disqualification was "legally sufficient" without any citation to cases nor any review of the facts giving rise to that conclusion, this Court has no basis upon which to exercise its discretionary jurisdiction. Finally, contrary to the State's assertion, this decision does not negatively impact the

judiciary, since it is of no precedential value given the lack of facts and legal citation.

ARGUMENT

THIS COURT DOES NOT EXERCISE ITS LIMITED DISCRETIONARY REVIEW JURISDICTION WHEN A DISTRICT COURT OPINION FAILS TO EXPRESSLY ADDRESS A QUESTION OF LAW

In order to invoke the discretionary jurisdiction of this Court pursuant to Rule 9.030(2)(A)(iii) and Article V, §3(b)(3), of the Florida Constitution, a decision of a District Court of Appeal must *expressly* affect a class of constitutional or state officers. This Court has elaborated, on numerous occasions, as to what constitutes such an express statement. Accordingly, per curiam decisions from the District Court which cite only to cases not pending on review in the Supreme Court, or those merely citing to a statute, a rule, or a decision of the United States Supreme Court, do not act to confer jurisdiction in the Florida Supreme Court. Gandy v. State, 846 So.2d 1141 (Fla. 2003); Dodi Publishing Co.

v. Editorial America, S.A., 385 So.2d 1369 (Fla. 1980). Further, in Florida Star v. B.J.F., 530 So.2d 286, 288 n. 3 (Fla. 1988), this Court cautioned that there is no “subject matter jurisdiction over a District Court opinion that fails to expressly address a question of law, such as (decisions) issued without opinion or citation.” As this Court then concluded in Gandy, “a District Court decision must contain ‘some statement’, indicating that it has ‘expressly addressed a question of law within the four corners of the opinion itself,’ which could ‘hypothetically . . . create conflict if there were another opinion reaching a contrary result,’ for this Court to have subject matter jurisdiction to review the case pursuant to Article V, §3(b)(3), of the Florida Constitution.”

As previously noted, the entirety of the District Court’s decision in this cause was as follows:

Petitioner’s Petition for Writ of Prohibition seeking review of the denial of the Motion for Disqualification of Judge Richard Luce in Circuit Court case number CRC-00-0135458 is granted as the Petitioner’s Motion for Disqualification filed in the Circuit Court is deemed legally sufficient. Pursuant to this order, a successor judge shall be immediately appointed pursuant to Florida Rule of Judicial Administration 2.160. The Circuit Court Clerk shall serve notice of such on this Court within ten days from the date of this order. The stay imposed pursuant to this Court’s February 29, 2008, order is lifted.

There is no statement, express or otherwise, to the facts giving rise to Judge Luce’s disqualification in the trial Court and, again, there is no citation to any legal

precedent in support of the Court's conclusory determination that the Petition for Writ of Prohibition was "legally sufficient." The only citation to a Florida Rule of Judicial Administration was directed to the Clerk of the Court to immediately appoint a successor judge.¹ As such, there is no statement of facts or law for this Court to review, nor any such statement to affect a class of constitutional officers. No litigant in any future proceeding could cite to the District Court's order of March 19, 2008, and claim it as precedent in their own case. Given that circumstance, and the established precedent of this Court governing the parameters of its limited discretionary jurisdiction, the State's request for the exercise of that discretionary jurisdiction should be denied.

¹A successor judge has been appointed and the matter has been rescheduled for hearing before the new judge.

CONCLUSION

Based upon the foregoing arguments and citations of authority, Respondent respectfully requests that this Court deny the State's request that it exercise discretionary jurisdiction pursuant to Article V, §3(b)(3), of the Florida Constitution.

Respectfully submitted.

Respectfully submitted.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via regular U.S. Mail to DIANA K. BOCK, AAG, Attorney General's Office, Concourse Center 4, 3507 East Frontage Road, Suite 200, Tampa, Florida 33607-7013, this 18th day of August, 2008.

DAVID T. WEISBROD, ESQ.
CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing Brief complies with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2) and has been typed in Times New Roman 14-point font.

DAVID T. WEISBROD, ESQ.