

IN THE SUPREME COURT OF FLORIDA

DONALD SCOTT GRIFFIS,

Petitioner,

Case No. SC08-2053

v.

R. P. TIFFT, WARDEN, GULF  
CORRECTIONAL INSTITUTION  
and/or WALTER MCNEIL,  
SECRETARY, FLORIDA  
DEPARTMENT OF CORRECTIONS,

Respondent.

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JURISDICTIONAL BRIEF OF RESPONDENT

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PRELIMINARY STATEMENT

Respondent, R. P. Tifft, Warden, Gulf Correctional Institution and/or Walter McNeil, Secretary, Florida Department of Corrections, 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, the prosecution, or the State. Petitioner, Donald Scott Griffis, the Appellant in the DCA and the defendant in the trial court, will be referenced in this brief as Petitioner or proper name. "PJB" will designate Petitioner's Jurisdictional Brief, followed by any appropriate page number.

STATEMENT OF THE CASE AND FACTS

On September 9, 2008, the First District Court of Appeal issued a per curiam dismissal without written opinion. Griffis v. Tifft, 2008 Fla. App. LEXIS 13945 (Fla. 1<sup>st</sup> DCA Sept. 9, 2008).

## SUMMARY OF ARGUMENT

Petitioner's jurisdictional brief improperly relies upon facts and argument outside the "four corners" of the district court's decision. An examination of the operative facts and principles of law, as contained in the "four corners" of the DCA's decision, reveals no express and direct conflict with the decisions in Gallego v. Purdy, 415 So. 2d 166 (Fla. 4<sup>th</sup> DCA 1982) and Mann v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 488 F.2d 75 (5<sup>th</sup> Cir. 1973). Petitioner has not established a constitutional basis for this Court to exercise its conflict jurisdiction. Therefore, jurisdiction should be declined.

ARGUMENT

ISSUE I

HAS PETITIONER SHOWN A BASIS FOR THIS COURT  
TO EXERCISE ITS DISCRETIONARY JURISDICTION?  
(Restated)

**Appellate Standard of Review and Jurisdictional Criteria**

The applicable standard of review for claims of direct and express conflict is *de novo* subject to the following criteria.

Petitioner contends that this Court has jurisdiction pursuant to Fla. R. App. P. 9.030(a)(2)(A)(iv), which parallels Article V, § 3(b)(3), Fla. Const. The constitution provides: The supreme court ... [m]ay review any decision of a district court of appeal ... that expressly and directly conflicts with a decision of another district court of appeal or of the supreme court 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)(rejected "inherent" or "implied" conflict; dismissed petition). Neither the record, nor a concurring opinion, nor a dissenting opinion can be used to establish jurisdiction.

Reaves, supra; Jenkins v. State, 385 So.2d 1356, 1359 (Fla. 1980)("regardless of whether they are accompanied by a dissenting or concurring opinion"). Thus, conflict cannot be based upon "unelaborated per curiam denials of relief," Stallworth v. Moore, 827 So.2d 974 (Fla. 2002).

In addition, it is the "conflict of decisions, not conflict of opinions or reasons that supplies jurisdiction for review by certiorari." Jenkins, 385 So. 2d at 1359.

In Ansin v. Thurston, 101 So. 2d 808, 810 (Fla. 1958), this Court explained:

It was never intended that the district courts of appeal should be intermediate courts. The revision and modernization of the Florida judicial system at the appellate level was prompted by the great volume of cases reaching the Supreme Court and the consequent delay in the administration of justice. The new article embodies throughout its terms the idea of a Supreme Court which functions as a supervisory body in the judicial system for the State, exercising appellate power in certain specified areas essential to the settlement of issues of public importance and the preservation of uniformity of principle and practice, with review by the district courts in most instances being final and absolute.

In the case at bar, the First District Court of Appeal issued a per curiam dismissal without written opinion. Therefore, there can be no conflict of decisions. Because there is no expressed and direct conflict, this Court must dismiss this case for lack of jurisdiction.

CONCLUSION

There is no constitutional basis for discretionary jurisdiction. The petition should be denied.

SIGNATURE OF ATTORNEY AND CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to Donald Scott Griffis, DC# 465795, F4-112U, Gulf Correctional Institution-Main, 500 Ike Steele Rd., Wewahitchka, Florida, 32465, by MAIL on November 4th 2008.

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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Jennifer J. Moore  
Attorney for State of Florida

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APPENDIX

Order of the First District Court of Appeal dated September 9,  
2008.