

IN THE SUPREME COURT OF FLORIDA

JESSICA COMPTON, :
 :
 Petitioner, :
 :
 vs. : Case No.
 :
 STATE OF FLORIDA, :
 :
 Respondent. :
 :
 _____ :

DISCRETIONARY REVIEW OF DECISION OF THE
DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

BRIEF OF PETITIONER ON JURISDICTION

JAMES MARION MOORMAN
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TENTH JUDICIAL CIRCUIT

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STATEMENT OF THE CASE AND FACTS

On August 8, 2005, the State Attorney for the Tenth Judicial Circuit, in and for Polk County, Florida, filed an information charging the Appellant, JESSICA L. COMPTON, with the misdemeanor offenses of trespass after warning in violation of section 810.08, Florida Statutes (2005), resisting an officer without violence in violation of section 843.02, Florida Statutes (2005), disorderly conduct in violation of section 877.03, Florida Statutes (2005), battery on a law enforcement officer in violation of section 784.07, Florida Statutes (2005) and resisting an officer with violence in violation of section 843.01, Florida Statutes (2005). The offenses allegedly occurred on or about July 8, 2005. (R40-41)

On October 2, 2009, Ms. Compton entered a plea of guilty to the charges against her. As a part of the plea agreement, Ms. Compton was sentenced to time served on the misdemeanor charges of trespass and disorderly conduct. Ms. Compton was sentenced to 12 months probation for resisting without violence and 60 months probation for the felony offenses of battery on a law enforcement officer and resisting an officer with violence. All terms of probation were to be served concurrently. The sentence was as a habitual felony offender. (R79-88)

An affidavit of violation of probation was filed on November

22, 2006 and an amended affidavit was filed on December 6, 2006. (R89, 92) An evidentiary hearing was held on March 9, 2007, before Judge Durrance. (T93-156) The basis of the State's motion to revoke Ms. Compton's probation was that she was in possession of cocaine and methamphetamine. A FDLE report was introduced over hearsay objection as to the identification of drugs found in Ms. Compton's room.

The trial court found Ms. Compton to be in willful violation of condition four of her probation for being in possession of the controlled substance and drug paraphernalia. (T153) The trial court sentenced Ms. Compton to time served on the misdemeanor offense and consecutive terms of five years imprisonment on each of the felony charges. The sentences were as a habitual felony offender. (T155, R162-167) Ms. Compton filed a timely notice of appeal on March 22, 2007. (R170)

Petitioner argued in her initial appeal that the "testimonial hearsay rule set forth in Crawford v. Washington, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004), should apply in probation and community control revocation proceedings.

On June 15, 2005, the Second District Court of Appeal issued a per curiam decision affirming petitioner's judgment and sentence. Compton v. State, ___So. 2d ___ (Case No. 2D07-1428 (Fla. 2d DCA February 6, 2008)). (Appendix A) In doing so, the court cited, inter alia, Hawthorne v. State, 953 So. 2d 751 (Fla. 2d DCA 2007). This case is currently pending before this Honorable Court.

Hawthorne v. State, Case No. SC07-801. Petitioner filed his notice of intent to invoke this Court's jurisdiction on February 28, 2008.

SUMMARY OF THE ARGUMENT

The decision in this case cited Hawthorne v. State, 953 So. 2d 751 (Fla. 2d DCA 2005), is a case now pending in this Court. (Case No. SC07-801). The opinion in Hawthorne holds that the "testimonial hearsay" rule set in Crawford v. Washington, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004) did not apply to probation and community control revocation proceedings. This Court stayed a ruling in Hawthorne pending a decision in Peters v. State, Case No. SC06-341.

ARGUMENT

ISSUE

THE DECISION IN THIS CASE CITES HAWTHORNE V. STATE, 953 So. 2d 751 (Fla. 2d DCA 2007), WHICH IS CURRENTLY PENDING BEFORE THIS COURT.

In Jollie v. State, 405 So. 2d 418 (Fla. 1981), this court held that similarly situated litigants should have similar avenues of review in the Florida court system. The authority relied on by the Second District Court of Appeal is currently pending before this Court. Hawthorne v. State, 953 So. 2d 751 (Fla.2d DCA 2007), review granted, Case No. SC07-801. The second district affirmed holding, that Crawford v. Washington, 541 U.S. 36 (2004) did not apply in community supervision revocation proceedings. The second district affirmed on the authority of Hawthorne, supra.

Pursuant to the procedure in Jollie, this Court should take jurisdiction. The issue argued on the merits in the direct appeal of this case, is also pending review in this court. Hawthorne v. State, supra. Petitioner is entitled to the same avenue of review.

CONCLUSION

This Court has discretionary jurisdiction to review the decision below and should exercise that jurisdiction to consider the merits of Petitioner's argument.

APPENDIX

PAGE NO.

1. Compton v. State, 2008 WL 314420
(Fla. 2d DCA, February 6, 2008).

CERTIFICATE OF SERVICE

I certify that a copy has been mailed to Ha Dao, Concourse Center #4, 3507 E. Frontage Rd. - Suite 200, Tampa, FL 33607, (813) 287-7900, on this _____ day of March, 2008.

CERTIFICATION OF FONT SIZE

I hereby certify that this document was generated by computer using Microsoft Word with Courier New 12-point font in compliance with Fla. R. App. P. 9.210 (a)(2).

Respectfully submitted,

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