

IN THE SUPREME COURT OF FLORIDA

TIMOTHY E. TRIMBLE

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Case No. SC09-1505

ON PETITION FOR DISCRETIONARY REVIEW FROM
THE SECOND DISTRICT COURT OF APPEAL
STATE OF FLORIDA

JURISDICTIONAL BRIEF/RESPONSE OF RESPONDENT

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STATEMENT OF THE CASE AND FACTS

According to the Florida Supreme Court's Case Docket of Case Number SC09-1505, Petitioner filed his Jurisdictional Brief on September 25, 2009. On the same day, this court struck Petitioner's Appendix as it failed to contain the "opinion order of the district court to be reviewed." (Appendix A). On October 1, 2009, Petitioner filed an Revised/Amended Appendix to his Jurisdictional Brief, attaching a written order by the Second District Court of Appeal (Appendix B).

The instant petition under this Court's Case Number SC09-1505 encompasses 15 separate case numbers from the Second District. These are 2D09-2749; 2751, 2752; 2753; 2754; 2756; 2758; 2759; 2761; 2763; 2765; 2766; 2767; 2768; and 2769, all relating to the same lower case number 06CF17146 (Appendix C, Composite).

The Second District Court of Appeal issued an order on July 30, 2009, which is the order being appealed to this Court, covering the same 15 cases:

The appeals transferred to this court by orders of the Florida Supreme Court of June 24, 2009, and June 26, 2009, duplicate existing appeals in this consolidated proceeding. No new proceedings shall be initiated.

Case number 2D09-2749, 2D09-2751, 2D09-2754, 2D09-2761, 2D09-2763 and 2D09-2768 are appeals from nonfinal, nonappealable orders.

Case numbers 2D09-2752, 2D09-2753, 2D09-2756, 2D09-2758, 2D09-2765, 2D09-2766, 2D09-2767 and 2D09-2769 lack rendition of a written order for this court to review. All consolidated appeals, including case number 2D09-2759, are untimely.

Upon consideration to appellant's response to this court's orders to show cause of June 16, 2009, all consolidated appeals are hereby dismissed.

2DCA's Order, July 30, 2009 (Appendix B).

There was no written opinion on any of the cases, aside from this order of dismissal issued by the Second District Court.

As to the merits of the instant petition, Petitioner checks the box that he's appealing from state courts opinion which "has been designated for publication is not yet reported." As reasons for granting the petition, Petitioner writes:

It is clear the process employed by the State of Florida is flawed. The petitioner Trimble has every right to expect a written reply on the merits of the Florida Supreme Court or have his concerns heard by the trial court. Furthermore, the petitioner has every expectation of the assistance of an attorney if he cannot afford or have the resources to hire one.

(Petition, p. 9)

SUMMARY OF THE ARGUMENT

Pursuant to Rule 9.030, Fla. R. App. P., Petitioner has alleged no grounds which warrant the discretionary jurisdiction of this Court. Therefore, the State respectfully asks this Honorable Court to deny jurisdiction of this case. The Florida Supreme Court lacks jurisdiction to review the instant petition as the District Court of Appeal did not issue a written opinion or order that expressly addresses a question of law within the four corners of the opinion or order itself.

ARGUMENT

ISSUE ONE

**THIS COURT SHOULD NOT GRANT DISCRETIONARY
REVIEW AS THERE IS NO BASIS FOR SUCH REVIEW
BASED ON THE COURT OF APPEAL'S ORDER**

It is the petitioner's burden to show that this Court has subject matter jurisdiction to review his case. The jurisdiction of this Court is limited to a narrow class of cases enumerated in the Florida Constitution. For example, this Court may review any decision of a district court of appeal that expressly and directly conflicts with the decision of another district court of appeal, or with the Supreme Court on the same question of law. Fla. Const. Art.V, Sect. 3(b)(3). The issue of the Court's jurisdiction is a "threshold matter that must be addressed" before the Court can reach the merits of the issue. In Re Holder, 945 So. 2d 1130, 1134 (Fla. 2006).

The rationale for limiting this Court's jurisdiction is the recognition that district courts are courts primarily of final appellate jurisdiction and to allow such courts to become intermediate courts of appeal would result in a condition far more detrimental to the general welfare and the speedy and efficient administration of justice than that which the system was designed to remedy. Jenkins v. State, 385 So. 2d 1356, 1358 (Fla. 1980).

As this Court explained in The Florida Star v. B.J.F., 530 So. 2d 286, 288 (Fla. 1988), the state constitution creates two separate concepts regarding this Court's discretionary review. The first concept is the broad general grant of subject-matter jurisdiction. The second more limited concept is a constitutional command as to how this Court may exercise its discretion in accepting jurisdiction. 530 So.2d at 288. Petitioner has failed to articulate the basis for this Court to exercise its jurisdiction over his case.

This Court has enunciated in The Florida Star v. B.J.F., that it has "subject-matter jurisdiction under article V, section 3(b)(3) of the Florida Constitution, over any decision of a district court that *expressly addresses a question of law within the four corners of the opinion itself*. That is, the opinion must contain a statement or citation effectively establishing a point of law upon which the decision rests." 530 So.2d at 288.

The only discernible order issued by Second District Court's disposed the subject cases categorized by three distinctive groupings: 1) cases that are appeals from nonfinal, nonappealable orders; 2) cases lacking rendition of a written order; and 3) cases that are untimely. Based on these same reasons, where was no written opinion issued by the Second District Court. Because the only discernible written order does

not expressly addresses a question of law and because there was no written opinion in addition to this order disposing Petitioner's cases collectively, this Court has nothing to review.

Fla. R. App. P. Rule 9.030 (2) specifies that discretionary jurisdiction may be exercised to review:

(A) decisions of district courts of appeal that

(i) expressly declare valid a state statute;

(ii) expressly construe a provision of the state or federal constitution;

(iii) expressly affect a class of constitutional or state officers;

(iv) expressly and directly conflict with a decision of another district court of appeal or of the supreme court on the same question of law;

(v) pass upon a question certified to be of great public importance;

(vi) are certified to be in direct conflict with decisions of other district courts of appeal;

(B) orders and judgments of trial courts certified by the district court of appeal in which the appeal is pending to require immediate resolution by the supreme court, and

(i) to be of great public importance, or

(ii) to have a great effect on the proper administration of

justice;

(C) questions of law certified by the Supreme Court of the United States or a United States court of appeals that are determinative of the cause of action and for which there is no controlling precedent of the Supreme Court of Florida.

The Florida Constitution, Art. 5 § 3 allows for the Florida Supreme Court as it:

(1) Shall hear appeals from final judgments of trial courts imposing the death penalty and from decisions of district courts of appeal declaring invalid a state statute or a provision of the state constitution.

(2) When provided by general law, shall hear appeals from final judgments entered in proceedings for the validation of bonds or certificates of indebtedness and shall review action of statewide agencies relating to rates or service of utilities providing electric, gas, or telephone service.

(3) May review any decision of a district court of appeal that expressly declares valid a state statute, or that expressly construes a provision of the state or federal constitution, or that expressly affects a class of constitutional or state officers, or 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.

(4) May review any decision of a district court of appeal

that passes upon a question certified by it to be of great public importance, or that is certified by it to be in direct conflict with a decision of another district court of appeal.

(5) May review any order or judgment of a trial court certified by the district court of appeal in which an appeal is pending to be of great public importance, or to have a great effect on the proper administration of justice throughout the state, and certified to require immediate resolution by the supreme court.

Nothing in the instant petition points to any of the grounds establishing jurisdiction by the Florida Supreme Court. Petitioner presents no constitutionally recognized basis for this Court to accept review of the instant issue. Accordingly, there is no basis for this Court to exercise its discretionary jurisdiction.

CONCLUSION

Based upon the foregoing authorities and arguments, Respondent respectfully requests that this Court deny jurisdiction.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to Timothy E. Trimble, 119 SE 21st Lane, Cape Coral, FL 33990, on this 3rd day of November, 2009.

CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 12-point Courier New, in compliance with Fla. R. App. P. 9.210(a)(2).

Respectfully submitted,

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