

IN THE SUPREME COURT OF FLORIDA

VINCENT ROEBUCK,

Petitioner,

Case No. SC07-807

v.

STATE OF FLORIDA,

Respondent.

JURISDICTIONAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

	<u>PAGE(S)</u>
TABLE OF CONTENTS .....	i
TABLE OF CITATIONS .....	ii
PRELIMINARY STATEMENT .....	1
STATEMENT OF THE CASE AND FACTS.....	1
SUMMARY OF ARGUMENT .....	2
ARGUMENT.....	3
WHETHER THE FIRST DISTRICT'S OPINION BELOW IS IN EXPRESS AND DIRECT CONFLICT WITH THE SECOND DISTRICT COURT'S DECISIONS IN <u>CLIBURN V. STATE</u> , 710 SO. 2D 669 (FLA. 2D DCA 1998) AND <u>JAGGERS V. STATE</u> , 536 SO. 2D 321 (FLA. 2D DCA 1988)? . . . . .	
CONCLUSION.....	8
SIGNATURE OF ATTORNEY AND CERTIFICATE OF SERVICE .....	8
CERTIFICATE OF COMPLIANCE .....	9

TABLE OF CITATIONS

<u>CASES</u>	<u>PAGE(S)</u>
<u>Ansin v. Thurston</u> , 101 So. 2d 808 (Fla. 1958) .....	4
<u>Cliburn v. State</u> , 710 So. 2d 669 (Fla. 2d DCA 1998) .....	passim
<u>Department of Health and Rehabilitative Services v. National Adoption Counseling Service, Inc.</u> , 498 So. 2d 888 (Fla. 1986).....	3
<u>Jaggers v. State</u> , 536 So. 2d 321 (Fla. 2d DCA 1988) .....	passim
<u>Jenkins v. State</u> , 385 So. 2d 1356 (Fla. 1980) .....	3,4
<u>Reaves v. State</u> , 485 So. 2d 829 (Fla. 1986) .....	3
<u>Roebuck v. State</u> , 953 So. 2d 40 (Fla. 1st DCA 2007, 32 Fla. L. Weekly D846 .....	passim
<u>Stallworth v. Moore</u> , 827 So. 2d 974 (Fla. 2002) .....	4
 <u>STATUTES</u>	
F.S. 90.610 .....	5,6
 <u>OTHER</u>	
Article V, § 3(b)(3) .....	3
Fla. R. App. P. 9.030(a)(2)(A)(iv).....	3
Fla. R. App. P. 9.210 .....	9

PRELIMINARY STATEMENT

Respondent, the State of Florida, 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, Vincent J. Roebuck, the Appellee in the DCA and the defendant in the trial court, will be referenced in this brief as Petitioner or by proper name.

"PJB" will designate Petitioner's Jurisdictional Brief. That symbol is followed by the appropriate page number.

A bold typeface will be used to add emphasis. Italics appeared in original quotations, unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

The pertinent history and facts are set out in the decision of the lower tribunal, attached in slip opinion form [hereinafter referenced as "slip op."] at Roebuck v. State, 953 So. 2d 40 (Fla. 1<sup>st</sup> DCA 2007). It also can be found at 32 Fla. L. Weekly D846.

## SUMMARY OF ARGUMENT

Conflict jurisdiction does not lie to the limited extent contemplated by the lower court. It does not lie where, as here, the appropriate focus upon the operative facts, as contained within the "four corners" of the DCA's decision, reveals no express and direct conflict with this Court or another DCA. Additionally, the cases deal with application of different principles of law.

Therefore, there is no expressed and direct conflict, and this Court must dismiss this case for lack of jurisdiction.

ARGUMENT

ISSUE I

WHETHER THE FIRST DISTRICT'S OPINION BELOW IS IN EXPRESS AND DIRECT CONFLICT WITH THE SECOND DISTRICT COURT'S DECISIONS IN CLIBURN V. STATE, 710 SO. 2D 669 (FLA. 2D DCA 1998) AND JAGGERS V. STATE, 536 SO. 2D 321 (FLA. 2D DCA 1988)? (Restated)

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.

Accordingly, the determination of conflict jurisdiction distills to whether the decision below reached a result opposite to that in Cliburn and Jaggers. The State submits that it did not.

First, the lower court, in affirming Petitioner's conviction, certified conflict with Cliburn and Jaggers "to the extent they create a false reporting exception to section

90.610, Florida Statutes." Roebuck v. State, 953 So. 2d at 40. The State submits that cases are either in direct conflict as that term has been defined, or they are not. Conflict jurisdiction does not exist to the limited extent recognized by the lower court.

The cases are also distinguishable from the instant case on their facts. In Cliburn, the defendant was tried for burglary and violation of a domestic injunction. At trial, the defense sought to impeach the victim by eliciting testimony regarding the fact she had previously filed a false police report alleging a former boyfriend had kidnapped her. The victim in Cliburn therefore made an official report to law enforcement officers and, in fact, committed a crime in so doing, because she filed an admittedly false report.

Jaggers is also distinguishable on its facts. Jaggers was tried for sexual battery and sought to introduce testimony that the victim had previously made a false report of sexual battery against another person. As in Cliburn, the evidence sought to be introduced involved an official report and the commission of a criminal offense by the victim in filing an admittedly false report.

In contrast to both Cliburn and Jaggers, Petitioner was tried for sexual battery and sought to introduce evidence that

years before the victim had allegedly blamed her brother for a burn she received. However, the facts of the case establish that the victim made no report whatsoever to law enforcement officials and instead the accusation was coerced by the victim's mother and the school nurse who refused to believe the injury was the result of an accident. Thus, the allegation at issue was not volunteered by the victim, it was not made to law enforcement personnel, and it was not made for purposes of obtaining an arrest or criminal prosecution based upon a false allegation. The cases are materially different from this one as to their facts.

Additionally, the cases are distinguishable from this one with regard to the application of the legal principle involved. As recognized by the First District Court below, in enacting F.S. 90.610, the Florida Legislature adopted the wording of the statute to bar all character impeachment based upon prior misconduct that did not involve a criminal conviction. No exception is written into, or considered by, the statute. The lower court based its decision on the law as set forth in the statute. In contrast, in Cliburn and Jaggers, the Second District Court of Appeal did not apply the law as required by F.S. 90.610 and did not base its decision on its provisions. Instead, the court disregarded the statute and created an

exception to it, usurping Legislative authority. The decision therefore actually deals with a different principle of law, one of the Second District's own creation.

The State submits that where the decisions at issue are distinguishable on their facts and apply different principles of law, conflict jurisdiction does not lie. Additionally, as previously stated, conflict jurisdiction does not exist to the limited extent contemplated by the lower court.

Therefore, there is no expressed and direct conflict, and this Court must dismiss this case for lack of jurisdiction.

CONCLUSION

Based on the foregoing reason, the State respectfully requests this Honorable Court decline to exercise jurisdiction.

SIGNATURE OF ATTORNEY AND CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to Michael Ufferman, Esq.; Counsel for Petitioner; Michael Ufferman Law Firm, P.A., 2022-1 Raymond Diehl Road, Tallahassee, Florida 32308, by MAIL on \_\_\_\_ day of May, 2007.

Respectfully submitted and served,

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[AGO# L07-1-13000]

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the font requirements of Fla. R. App. P. 9.210.

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Attorney for State of Florida

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VINCENT J. ROEBUCK,

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APPENDIX

Roebuck v. State,

953 So. 2d 40, Fla. App. LEXIS 4677, 32 Fla. L. Weekly D846  
(Fla. 1<sup>st</sup> DCA 2007).