IN THE SUPREME COURT OF FLORIDA

CASE NO. SC08-667

PEDRO MARTINEZ,
Petitioner,

- versus -

STATE OF FLORIDA,
Respondent.

ON APPEAL FROM THE FOURTH DISTRICT COURT OF APPEAL

RESPONDENT'S BRIEF ON JURISDICTION

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Preliminary Statement

Petitioner was the Defendant in the trial court and the Appellant in the Fourth District Court of Appeal, and will be referred to herein as "Petitioner" and "Martinez." Respondent, the State of Florida, was the prosecution in the trial court and the Appellee in the Fourth District Court of Appeal and will be referred to herein as "Respondent" or "the State."

Reference to Petitioner's brief shall be (PB), followed by the appropriate page number.

A copy of the order issued by the Fourth District Court of Appeal is attached as an Appendix.

Statement Of The Case and Facts

Noting that in determining jurisdiction, this Court is limited to the facts apparent of the face of the opinion, Hardee v. State, 534 So. 2d 706, 708 n.1 (Fla. 1998), Respondent will set forth the entire opinion below:

> We affirm the trial court's denial of Appellant's Florida Rule of Criminal Procedure 3.800(a) motion. Appellant's successive motion was barred by collateral estoppel, and Appellant has not shown that application of the procedural bar will result in a manifest injustice. State v. McBride, 848 So.2d 287, 291 (Fla.2003).
>
> Appellant's motion failed to explain how the "trial transcript" would demonstrate an entitlement to relief. Jackson v. State, 803 So.2d 842 (Fla. 1st DCA 2001). A conclusory allegation that the answer lies somewhere in the "trial transcript" is not enough to satisfy the threshold allegation requirements of rule 3.800(a). Id. at 845.
>
> Appellant has not identified record facts that show he is entitled to relief on his claim that his consecutive habitual felony offender (HFO) sentences violate Hale v. State, 630 So.2d 521, 524 (Fla.1993). Theophile v. State, 967 So.2d 948 (Fla. 1st DCA 2007). In order to establish a sufficient claim of a violation of Hale in a 3.800(a) motion, Appellant must identify, with particularity, non-hearsay record documents and explain how they demonstrate that the crimes arose from a single criminal episode. Lauramore v. State, 949 So.2d 307, 308 (Fla. 1st DCA 2007) (citing Harris v. State, 875 So.2d 735 (Fla. 2d DCA 2004)).
>
> Neither of Appellant's motions raising this issue has explained how anything in the trial transcript would demonstrate that his convictions for aggravated assault

> on a law enforcement officer and possession of contraband in prison arose from the same criminal episode. §§ 784.021, .07, Fla. Stat. (1991); § 944.47(1)(a), Fla. Stat. (1991).
>
> As no manifest injustice is apparent, Appellant's claim is barred by collateral estoppel.

Martinez v. State, 976 So.2d 68, 68-69 (Fla. 4th DCA 2008). Petitioner seeks review of this decision, alleging conflict jurisdiction.

Summary of the Argument

This Court does not have jurisdiction to review the instant case. The decision of the Fourth District Court of Appeal in the instant case does not expressly and directly conflict with State v. McBride, 848 So. 2d 287 (Fla. 2003). Therefore, this Court may not review the case at bar and should dismiss the Petitioner's case.

Argument

THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL IN THE INSTANT CASE IS NOT IN CONFLICT WITH STATE v McBRIDE, 848 So. 2d 287 (Fla. 2003). (Restated)

Petitioner alleges that the Fourth District Court of Appeal's decision in the present case expressly and directly conflicts with State v. McBride, 848 So. 2d 287 (Fla. 2003). (PB 3-4). In an effort to create conflict, Petitioner has mischaracterized both the Fourth District Court of Appeal's holding in Martinez v. State, 976 So.2d 68 (Fla. 4th DCA 2008) and this Court's holding in McBride. Petitioner also improperly cites facts outside the four corners of the opinion. The Fourth District Court of Appeal's opinion below does not conflict with this Court

but rather follows this Court's holding in McBride.

Article V, § 3(b)(3) of the Florida Constitution restricts this Court's review of a district court of appeal's decision only if it expressly conflicts with a decision of this Court or of another district court of appeal. It is not enough to show that the district court's decision is effectively in conflict with other appellate decisions. However, this Court's jurisdiction to review the Fourth District's decision in this case may be invoked by either the announcement of a rule of law which conflicts with a law previously announced by this Court or another district court of appeal or by the application of a rule of law to produce a different result in a case which involves substantially the same facts as a prior case. Mancini v. State, 312 So. 2d 732, 733 (Fla. 1975).

The term "expressly" requires some written representation or expression of the legal grounds supporting the decision under review. See Jenkins v. State, 385 So. 2d 1356 (Fla. 1980). A decision of a district court of appeal is no longer reviewable on the ground that an examination of the record would show that it is in conflict with another appellate decision; it is reviewable if the conflict can be demonstrated from the district court of appeal's opinion itself. The district court of appeal must at least address the legal principles which were applied as a basis for the decision. See Ford Motor Co. v. Kikis, 401 So. 2d 1341, 1342 (Fla. 1981).

When determining whether conflict jurisdiction exists, **this Court is limited to the facts which appear on the face of the opinion.** Hardee v. State, 534 So. 2d at 708, n.1 (e.s.); White Constr. Co. v. Dupont, 455 So. 2d 1026 (Fla. 1984). "'Conflict between decisions must be express and direct, i.e., it must appear within the four corners of the majority decision.' In other words, inherent or so called 'implied' conflict may no longer serve as a basis for this Court's jurisdiction." State, Department of Health v. National Adoption Counseling Service, Inc., 498 So. 2d 888, 889 (Fla. 1986) (quoting Reaves v. State, 485 So. 2d 829, 830 (Fla. 1986)). See also School Board of Pinellas County v. District Court of Appeal, 467 So. 2d 985, 986 (Fla. 1985).

This Court in McBride specifically held that "collateral estoppel" applies to bar claims in successive Rule 3.800 motion. McBride, at 290-291. "Collateral estoppel, on the other hand, only precludes a defendant from rearguing in a successive rule 3.800 motion the same issue argued in a prior motion." Id., at 291. However, this Court held the doctrine of "collateral estoppel" would "not be invoked to bar relief where its application would result in a manifest injustice." Id., at 292. This Court explained that whether the application of collateral estoppel creates a manifest injustice must be determined from the face of the record. Id.

The Fourth District Court of Appeal found that Martinez' successive motion

was barred by collateral estoppel. Martinez, at 68. No further factual context is provided in the four corners of the opinion. The Fourth District Court then examined whether the manifest injustice exception to the application of collateral estoppel was applicable pursuant to the dictates of this Court in McBride. Martinez, at 68. The opinion below then examined Martinez' motion finding the face of the record did not demonstrate the existence of the manifest injustice exception. Martinez, at 68-69. The court below relied upon McBride and in fact conducted its analysis in accord with the holding and principles outlined by this Court. Thus, contrary to Martinez' argument, the opinion below does not conflict with McBride but rather is in accord with this Court's holding.

Therefore, Petitioner's argument for this Court to accept jurisdiction must fail as no "direct" conflict exists between the opinion below and McBride. Petitioner's reliance upon matters outside the four corners of the district court's opinion does not create the "conflict" required for invoking this Court's jurisdiction pursuant to Art. V, § 3(b)(3), Fla. Const. This Court should reject Petitioner's suggestion that it exercise its discretionary jurisdiction to review the underlying decision of the Fourth District Court of Appeal.

Conclusion

WHEREFORE, based on the foregoing argument and authorities, Respondent respectfully submits that this Court does not have jurisdiction to review the above-styled case.

Respectfully submitted,
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Certificate Of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to **PEDRO MARTINEZ, D.O.C. # 486342**, Columbia Correctional Institution, 216 S.E. Corrections Way, Lake City, Florida 32025, this **5th** day of May, 2008.

_/s/_____
SUE-ELLEN KENNY
Assistant Attorney General

Certificate of Font Compliance

I HEREBY CERTIFY that this document, in accordance with Rule 9.210 of the Florida Rules of Appellate Procedure, has been prepared with Times New Roman 14-point font.

_/s/_____
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