

IN THE SUPREME COURT OF FLORIDA

CASE NO. SCO9-1026
L.T. CASE NO. 4D09-417

FREDDIE L. HALIBURTON,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

RESPONDENT'S BRIEF ON JURISDICTION

ON DISCRETIONARY REVIEW FROM THE
FOURTH DISTRICT COURT OF APPEAL

BILL McCOLLUM
ATTORNEY GENERAL
Tallahassee, Florida
CELIA TERENZIO
BUREAU CHIEF, West Palm Beach
Florida Bar Number: 0656879
DIANE F. MEDLEY
Assistant Attorney General
Florida Bar Number: 88102
1515 North Flagler Drive, 9th Floor
West Palm Beach, Florida 33401
561-837-5000

Counsel for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES.	iii
STATEMENT OF THE CASE AND FACTS.	1
SUMMARY OF THE ARGUMENT.	5
JURISDICTIONAL STATEMENT.	5
ARGUMENT.	6
 THERE IS NO DISCRETIONARY REVIEW AVAILABLE; PETITIONER HAS FAILED TO SHOW THAT THIS DECISION IS IN EXPRESS AND DIRECT CONFLICT WITH <u>RAY V. STATE</u>, 403 SO. 2D 956 (FLA. 1981), ON THE SAME QUESTION OF LAW. [Restated]	
CONCLUSION.	8
CERTIFICATE OF SERVICE.	9
CERTIFICATE OF COMPLIANCE.	10

TABLE OF AUTHORITIES

Cases Cited

<u>Haliburton v. State</u> , 7 So. 3d 601, 603 (Fla. 4 th DCA 2009).	1-5, 7-8
<u>Jenkins v. State</u> , 385 So. 2d 1356 (Fla. 1980)	6
<u>Ray v. State</u> , 403 So. 2d 956 (Fla. 1981).	5, 7-8
<u>Reaves v. State</u> , 485 So. 2d 829 (Fla. 1986)	6
<u>Sanders v. State</u> , 944 So. 2d 203 (Fla. 2006).	3

Rules Cited

Fla. R. App. P. 9.030(a)(2)(A)(iv).	5
---	---

STATEMENT OF THE CASE AND FACTS

Petitioner Freddie L. Haliburton was convicted and sentenced as to several offenses stemming from a 2002 incident involving him beating his ex-girlfriend with a gun and threatening to kill her. Haliburton v. State, 7 So. 3d 601, 603 (Fla. 4th DCA 2009). The police had responded to a 911 call and found petitioner in the street, covered in blood and holding a chrome handgun; he fled but was apprehended. *Id.* In the presence of several witnesses, he had abducted his ex-girlfriend, placed her in a headlock, and forced her into his van. *Id.* There he had held her at gunpoint, struck her with the gun several times, and told her he was going to kill her before he committed suicide. *Id.* The police had arrived while he was beating her in an attempt to get her into his house. *Id.* After his arrest, petitioner made incriminating statements at the police station, such as: “I told her to quit f---ing with me,” “I should have shot her” and “in six months, eight months, whenever this comes to trial, the only thing I’ll be facing is the firearm charge because the rest of this is going away.” *Id.* The victim had a four-inch laceration on her head that required staples. *Id.*

The information in the case had charged petitioner with aggravated battery based on alternative theories: that he used a deadly weapon (the firearm) or that he intentionally caused great bodily harm to the victim. *Id.*

The jury convicted him of aggravated battery by causing the victim great bodily harm. *Id.* at 605.

In his direct appeal, petitioner had argued that the trial court erred in instructing the jury that aggravated battery based on the theory of great bodily harm was a lesser included offense of aggravated battery with a firearm. *Id.* at 603. The trial court had agreed with the state that application of the 10-20-Life statute made aggravated battery with a firearm a greater offense because the jury finding that petitioner possessed a firearm would call for a ten-year minimum mandatory sentence. *Id.* On direct appeal, petitioner had argued that the offenses were the same degree and carried the same maximum penalty, so the jury was misled into believing it was convicting of a crime with a lesser penalty. *Id.* at 604. The appellate court had affirmed, rejecting the claim on the merits. *Id.* at 603.

Petitioner had raised “this same claim in a Rule 3.800(a) motion to correct illegal sentence which was denied on the merits and affirmed.” *Id.* at 603. He had then “raised the same and similar variants of the same claim again in a motion for postconviction relief. That motion was also denied and affirmed on the merits.” *Id.*

In the decision now before this Court, petitioner had filed motions under Florida Rule of Criminal Procedure 3.800(a) and 3.850, both of which

“raised variants of the same issue that has been repeatedly denied and rejected on appeal.” *Id.* The Fourth District Court of Appeal affirmed, holding that “the claim is barred by the law of the case and collateral estoppel doctrines and no manifest injustice results.” *Id.* At 602-603.

The Fourth District analyzed changes in the law, noting that when it affirmed the direct appeal, this Court had not yet decided Sanders v. State, 944 So. 2d 203 (Fla. 2006), wherein this Court recognized that a lesser-included offense need not be lesser in both degree and penalty to be listed as a lesser offense. Haliburton, 7 So. 3d at 604. The Fourth District noted that since Sanders, it was now apparent that lesser-included offenses are determined by the elements of the offenses, not the penalties attached. Haliburton, 7 So. 3d at 604. Thus, under a Sanders analysis, the jury should have determined whether petition committed the aggravated battery by using a deadly weapon, by intentionally causing great bodily harm, or by both since the state had alleged alternative theories in the information. *Id.* A special interrogatory could have been used as to possession of the firearm. *Id.* However, the law before Sanders as to how “lesser included offenses should be listed on a verdict form was less clear.” *Id.*

The Fourth District noted that “[n]o court has held that the ruling in *Sanders* applies retroactively to cases that were final when *Sanders* was

decided. We do not believe that the evolutionary refinement announced in *Sanders*, regarding how to order offenses on a verdict form, applies retroactively to disturb the finality of Haliburton's conviction." *Id.* at 604-605. It also found that petitioner's motions were barred by the law of the case and collateral estoppels, and that application of a procedural bar did not result in a manifest injustice. *Id.* at 605.

The court reasoned that "[t]he jury in this case was permitted to exercise its pardon power but refused to convict Haliburton of simple battery which was listed as the next lesser-included offense," and that the jury had "determined that the state proved beyond a reasonable doubt that Haliburton committed an aggravated battery by intentionally causing the victim great bodily harm. *Id.* Although it appeared that, following *Sanders*, the great bodily harm theory should not have been listed as a lesser offense, any error was not fundamental so as to be raised at any time. *Id.* The issue had been preserved and argued on appeal, when the law was less clear. *Id.* The court concluded that a manifest injustice would not occur if the alleged error was not corrected. *Id.* at 606. The evidence that petitioner had committed the aggravated battery by intentionally causing great bodily harm "was strong if not overwhelming." *Id.* The jury had refused to use its pardon power by convicting of a simple battery, and the possibility of such a pardon could not

form the basis for finding prejudice. *Id.* The instruction, “although potentially erroneous,” did “not reach down into the validity of the trial such that the conviction could not be obtained without the error.” *Id.*

Petitioner now seeks to invoke the discretionary jurisdiction of this Court.

SUMMARY OF THE ARGUMENT

Conflict jurisdiction requires express and direct conflict between this decision and that of either another district court or this Court; the conflict must be on the same point of law and appear within the four corners of the conflicting decisions. There is no conflict jurisdiction available here, where there is no conflict as alleged by petitioner between the decision in his case and the decision in Ray v. State, 403 So. 2d 956 (Fla. 1981).

JURISDICTIONAL STATEMENT

Petitioner can invoke this Court’s discretionary jurisdiction only by showing that the district court decision expressly and directly conflicts with a decision from this Court or from another Florida district court on the same question of law. Fla. R. App. P. 9.030(a)(2)(A) (iv).

ARGUMENT

THERE IS NO DISCRETIONARY REVIEW AVAILABLE; PETITIONER HAS FAILED TO SHOW THAT THIS DECISION IS IN EXPRESS AND DIRECT CONFLICT WITH RAY V. STATE, 403 SO. 2D 956 (FLA. 1981), ON THE SAME QUESTION OF LAW. [Restated]

To invoke this Court's discretionary jurisdiction, there must be express and direct conflict with a decision from another Florida district court of appeal or from this Court, on the same point of law, appearing "within the four corners of the majority decision." Reaves v. State, 485 So. 2d 829, 830 (Fla. 1986). The only relevant facts are "those facts contained within the four corners of the decisions allegedly in conflict." *Id.* This is so because this Court's powers "to review decisions of the district courts of appeal are limited and strictly prescribed." Jenkins v. State, 385 So. 2d 1356, 1357 (Fla. 1980).

District courts were never intended to be intermediate courts; rather, this Court 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." Jenkins, 385 So. 2d at 1357-1358.

Petitioner argues that the decision in his case conflicts with this Court's decision in Ray v. State, 403 So. 2d 956 (Fla. 1981). However, that case is not in express and direct conflict, on the same point of law, as appearing within the four corners of the opinion in petitioner's case.

In the opinion issued in petitioner's case, the Fourth District noted Ray for the proposition that it set out the test for fundamental error where an instruction was improperly submitted to the jury without objection. Haliburton, 7 So. 3d at 605. The Fourth District noted that petitioner's situation was unlike Ray because petitioner's counsel had objected, the issue had been preserved, and it had been argued on appeal. *Id.*

The issue in Ray was "whether a defendant convicted of a crime for which he was not charged, but which was submitted to the jury as a lesser included offense when in fact it was not, may challenge that conviction when he failed to object to the submission of that crime to the jury." Ray, 403 So. 2d at 958. Contrary, the issue in petitioner's case was whether a claim could be barred by the law of the case and collateral estoppel, with no manifest injustice resulting, where petitioner was charged with alternative means of committing the crime of committing aggravated battery, but the jury was erroneously instructed that one of the alternative means was a lesser-included offense of the other. Haliburton, 7 So. 3d at 602-603.

In Ray the defendant “was convicted of a crime for which he was not charged.” 403 So. 2d at 959. Contrary, here petitioner was charged with the crime for which he was convicted. 7 So. 3d at 603. In Ray the issue was unpreserved by objection, and considered waived by the appellate court. 403 So. 2d at 958-959. Contrary, here petitioner’s issue was preserved, which permitted it to be argued on direct appeal and in several subsequent collateral attacks, where it was decided on the merits each time. 7 So. 3d at 603, 605.

The Ray court’s entire focus was fundamental error, and it set forth the test to be utilized to determine whether unobjected-to error was fundamental in the context of erroneous lesser-included charges. 403 So. 2d at 961. The focus in petitioner’s case was whether he was barred by law of the case and collateral estoppel, and whether a manifest injustice had resulted in petitioner’s specific case. 7 So. 3d at 602-605.

Because there is no conflict between petitioner’s decision and the decision in Ray, discretionary review is not available to petitioner.

CONCLUSION

For the foregoing reasons, discretionary review should not be granted. There is no direct and express conflict between petitioner’s decision and a decision from another Florida district court of appeal or from this Court.

Respectfully submitted,

BILL McCOLLUM
ATTORNEY GENERAL
Tallahassee, Florida

CELIA TERENCE
Assistant Attorney General
Bureau Chief
Florida Bar Number: 0656879

DIANE F. MEDLEY
Assistant Attorney General
Florida Bar Number: 88102
1515 North Flagler Drive
9th Floor
West Palm Beach, FL 33401
(561)837-5000

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been forwarded via U.S. mail to petitioner: Freddie L. Haliburton, pro se, DC# 594270, Century Correctional Institution, 400 Tedder Road, Century, Florida 32535, on June 22, 2009.

DIANE F. MEDLEY
Counsel for Respondent

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief has been prepared with Times New Roman 14-point type and complies with the font requirements of Florida Rule of Appellate Procedure 9.210.

Counsel for Respondent