

IN THE SUPREME COURT OF FLORIDA

DONNELL QUARTERMAN,

Petitioner,

v.

Case No. SC09-1139

L.T.[DCA] No. 1D08-1844

Cir. App. Ct. 2005 CA 01564

WALTER A. McNEIL,  
SECRETARY, FLORIDA DEPARTMENT  
OF CORRECTIONS,

Respondent.

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

JURISDICTIONAL ANSWER BRIEF OF RESPONDENT

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## **RESPONDENT'S INDEPENDENT STATEMENT OF THE CASE AND FACTS**

The pertinent history and facts are set out in the decision of the lower tribunal, attached in Appendix A, from Donnell Quarterman v. Walter A. McNeil, 1 So. 3d 393 (Fla. 1<sup>st</sup> DCA 2009)(Case No. 1D08-1844).

In unfurling Petitioner's circuit court filings, the First District Court of Appeal found that it lacked jurisdiction to hear Petitioner's case. Petitioner had filed a circuit court petition for writ of mandamus. 1 So. 3d at 392. The circuit court denied mandamus relief on November 30, 2006. Petitioner, thereafter, moved for rehearing and for disqualification of the judge. Id. The circuit court denied these motions in an order rendered January 30, 2007. Rather appealing, Petitioner moved for relief from the order on rehearing and disqualification. Id. On March 17, 2008, the circuit court issued an "Order Denying Relief from Judgment and Closing File." Id. It was thereafter that Petitioner sought appellate relief. Id.

The First DCA gave Petitioner an opportunity to respond to its jurisdictional concerns. Id. The First DCA found that the order Petitioner was appealing was neither a final nor appealable pursuant to Rule 9.130, Florida Rules of Appellate Procedure. 1 So. 3d at 393. The First DCA recognized that

"[o]rders entered on authorized and timely motions for relief from judgment are immediately appealable pursuant to Rule 9.130(a)(5)." Id. However, explained the First DCA, Petitioner's motion for relief was not such an authorized motion because it was not directed towards a "'final judgment, decree, order or proceeding,' as required by Florida Rule of Civil Procedure 1.540(b)." 1 So. 3d at 393. Thus, said the First DCA, "an order on a motion for relief from an order on a motion for rehearing is not an appealable." 1 So. 3d at 393. The First DCA further found that a motion to disqualify the trial judge does not result in a final order and was thus not an appealable under Rule 9.130. Id.

Respondent rejects Petitioner's statement of case and facts, see Amended Initial Jurisdictional Brief at pages 6-8, because it improperly relies on the record before the district court. See Reaves v. State, 485 So. 2d 829, 830 n. 3 (Fla. 1986)(explaining that the only facts relevant to a decision to accept or reject petitions asserting decisional conflict are those facts contained within the four corners of the decisions and not those based on a review of the record or on facts recited only in dissenting opinions."). Additionally, Petitioner's statement of case and facts contains assertions that are not "facts" but rather conclusory, unsupported allegations or improper legal argument.

### **JURISDICTIONAL STATEMENT**

Pursuant to Article V, Section 3(b)(3), Florida Constitution, this Court has discretionary jurisdiction to hear a matter if express and direct conflict exists between the lower court's decision in this case and the decision of another district court of appeal or this Court on the same question of law.

### **SUMMARY OF THE ARGUMENT**

The District Court's opinion contains no express and direct conflict with any decision of the decision of another district court of appeal or this Court on the same question of law.

### **ARGUMENT**

In making a claim of express and direct conflict with prior court decisions, the conflict "must appear within the four corners of the majority decision," and consideration to the dissent and record is inappropriate for establishing jurisdiction. Reaves v. State, 485 So.2d at 830; Dept. of Health and Rehabilitative Services v. Nat'l Adoption Counseling Service, Inc., 498 So. 2d 888, 889 (Fla. 1986). Therefore, the only facts the Court may consider in making the determination to accept or reject a petition are those

contained in the decision alleged to be in conflict. See Jenkins v. State, 385 So. 2d 1356 (Fla. 1980). Moreover, "[t]his Court may only review a decision of a district court of appeal that expressly and directly conflicts with a decision of another district court of appeal or the Supreme Court on the same question of law." Id. at 1359. This limited review is due to the fact that district courts of appeal were not intended to be intermediate level courts. Ansin v. Thurston, 101 So. 2d 808 (Fla. 1958).

#### **ISSUE I**

There is no express and direct conflict exists between the decision below and Bastida v. Pablo Rawl Vitaker, 590 So. 2d 1092 (3rd DCA 1991).

Petitioner alleges conflict between the First DCA's decision and language from Bastida v. Pablo Rawl Vitaker, 590 So. 2d 1092-93 (3<sup>rd</sup> DCA 1991), as follows:

. . . We note, however, that appellant has filed an amended motion to vacate under Fla.R.Civ.P. 1.540, as authorized by the above order of dismissal without prejudice, which amended motion is presently pending in the trial court. *Any order finally disposing of this amended motion would be appealable as a final order under the method prescribed by Fla.R.App.P. 9.130(a)(5), although the time for taking such an appeal would not be stayed by a motion for rehearing filed thereafter.* Francisco v. Victoria Marine Shipping, Inc., 486 So.2d 1386 (Fla. 3d

DCA), *rev. denied*, 494 So.2d 1153 (Fla.1986). Moreover, the appellant on such an appeal would be permitted to assert as error the denial of her motion for rehearing and clarification from which she abortively seeks review in the instant appeal.(emphasis added)

590 So.2d 1092-93.

The Quarterman opinion does not dispute that orders from *authorized* rule 1.540 motions are appealable orders. See 1 So. 3d at 393. However, Petitioner's motion for relief "was not such an authorized motion because it was not directed towards a 'final judgment, decree, order or proceeding" as required by Florida rule of Civil Procedure 1.540(b)." 1 So. 3d at 393. Thus, there is no "direct and express" conflict between the decision below and the arguably obiter dictum relied upon by Petitioner in Bastida.

Petitioner, nevertheless, argues that a rule 1.540(b)(4) motion has no time limitation, and that his motion to vacate the order denying his motion for rehearing entered on January 30, 2007 "incorporated" a challenge to the order denying mandamus relief on November 30, 2006. See Amended Initial Jurisdictional Brief at pages at 8, 11 & 12. This, however, is not within the four corners of the Quarterman opinion which specifically stated:

The appellant brought this appeal seeking review of an "Order Denying Relief from



Judgment and Closing File," entered on March 17, 2008. This order ruled on a motion that addressed and sought relief from an "Order Denying Rehearing and Denying Motions for Disqualification," which had been entered on January 30, 2007.

1 So. 2d 392 (emphasis added). As such, Petitioner is making allegations regarding the record to establish conflict. Yet, the record cannot be used to establish jurisdiction. Reaves, supra; Jenkins, 385 So.2d 1356, 1359 (Fla. 1980)("regardless of whether they are accompanied by a dissenting or concurring opinion"). 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.

Therefore, no conflict is expressly evident on the face of the opinion challenged by Petitioner. See Jenkins, 385 So. 2d at 1356.

**CONCLUSION**

For the reasons set forth above, this Court should decline to accept discretionary jurisdiction.

Respectfully submitted,

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COUNSEL FOR RESPONDENT

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to DONNELL QUARTERMAN, DC# 174370, Tomoka Correctional Institution, 3950 Toger Bay Road, Daytona Beach, FL 32124, this 15th day of January 2010.

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Joy A. Stubbs  
Assistant Attorney General

**CERTIFICATE OF COMPLIANCE**

Undersigned counsel hereby certifies that this brief is produced in COURIER NEW, 12 point font, and thereby fully complies with the font requirement of Fla.R.App.P.

9.210(a)(2).

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