

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC09-1144

**ANDERSON LORMEUS,**  
Petitioner,

- versus -

**STATE OF FLORIDA,**  
Respondent.

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ON APPEAL FROM THE FOURTH DISTRICT COURT OF APPEAL

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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 “Lormeus.” 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 relevant portions of the opinion below:

We hold that double jeopardy does not prevent a court from granting the state's timely motion to rehear an order granting a rule 3.800(a) motion that was based on false or incomplete information.

Lormeus v. State, 10 So.3d 190, 191 (Fla. 4<sup>th</sup> DCA 2009).

In September 2005, appellant filed a motion to vacate an illegal sentence, apparently under Florida Rule of Criminal Procedure 3.800(a). He argued that the 10 year sentence was illegal because he had entered a plea to a reduced charge, a third degree felony under section 827.03(3)(c), to which a maximum sentence of five years applied. To support his argument, appellant pointed to the judgment of conviction, which identified the crime involved as section “827.03(3)” and indicated that the degree of crime was “3F.”

On October 18, 2005, a new circuit judge, not the one who had accepted the plea, granted appellant's motion and issued a written order which vacated the “illegal sentence” and sentenced appellant to five years in prison.

Almost immediately, the state filed an emergency motion for rehearing. It argued that the statement on the judgment of conviction identifying the degree of crime as “3F” was a clerical error, because both the transcript of the plea conference and the written plea sheet identified the crime to which the defendant entered a plea as a second degree felony. On October 20, 2005, the trial

court vacated the October 18 order which granted the motion to correct an illegal sentence

Id., at 191.

In May 2008, appellant filed a rule 3.800(a) motion arguing that his sentence was illegal, because once the trial court reduced his sentence to five years on October 18, 2005, the subsequent vacation of the sentence and reinstatement of the 10 year sentence violated double jeopardy.

Id., at 191-192.

There was no double jeopardy violation in October 2005, because the order granting the 3.800(a) motion was vacated before it became final. Rule 3.800(b)(1)(B) provides that “[a] party may file a motion for rehearing of any order entered under [rule 3.800(a) or rule 3.800(b)] within 15 days of the date of service of the order....” One purpose of the rule allowing rehearing is to allow the trial court to correct a mistake instead of requiring an appeal. The rule allows the state to move to rehear an order granting a defendant relief. By definition, orders granting rule 3.800 motions will reduce sentences. It makes no sense for the rules of criminal procedure to allow for a motion seeking relief-the vacation of an order reducing a sentence-that would always violate double jeopardy. Within the 15 day time limit, the state moved for rehearing in this case and demonstrated that the defendant had pleaded guilty to a second degree felony. The trial court was permitted to correct a mistake based on faulty information.

Id., at 192.

Petitioner seeks review of this decision, alleging the Fourth District Court of

Appeal expressly and directly conflicts with the First District Court of Appeal's decision in Spear v. State, 632 So. 2d 201 (Fla. 1<sup>st</sup> DCA 1994). Fla. R. App. P. 9.030(a)(2)(A)(iv).

### **Summary of the Argument**

This Court should decline to accept jurisdiction to review the instant case because the opinion of the Fourth District Court of Appeal does not conflict with a decision of another District Court of Appeal. Rather, in the instant case, the Fourth District Court of Appeal's opinion is harmony with Spear.

## Argument

THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL IN THE INSTANT CASE IS NOT IN CONFLICT WITH SPEAR v. STATE, 632 So. 2d 201 (Fla. 1<sup>st</sup> DCA 1994). (Restated)

Petitioner alleges that the Fourth District Court of Appeal's decision in the present case expressly and directly conflicts with Spear v. State, 632 So. 2d 201 (Fla. 1<sup>st</sup> DCA 1994). (PB 3-5).

Petitioner specifically argues the Fourth District Court of Appeals decision conflicts with the double jeopardy holding in Spear. Petitioner's argument is based upon his perception that the error at issue was "the court's own misconception as to the degree of felony (sentencing guideline) petitioner plead to." (PB 3). As noted by the District Court below, Petitioner's version of the facts is inaccurate. Lormeus, at 193.

It is well settled that in order to establish conflict jurisdiction, the decision sought to be reviewed must expressly and directly create conflict with a decision of another District Court of Appeal or of the Supreme Court on the same question of law. Article 5, Section 3(b)(3) Fla. Const.; Jenkins v. State, 385 So. 2d 1356 (Fla. 1980). Thus, conflict jurisdiction is properly invoked only when the district court announces a rule of law which conflicts with another court's pronouncement, or when the district court applies a rule of law to produce a different result in a case



which involves substantially the same facts of another case. Mancini v. State, 312 So. 2d 732, 733 (Fla. 1975). This is because "two cases can not be in conflict if they can be validly distinguished." Morningstar v. State, 405 So. 2d 778, 783 (Fla. 4th DCA 1981), Anstead J. concurring; affirmed, 428 So. 2d 220 (Fla. 1982). See also, Department of Revenue v. Johnston, 442 So. 2d 950 (Fla. 1983).

As noted previously, the case at bar is factually distinguishable from Spear. Initially, the procedural posture of the cases varies significantly. In Spear, resentencing occurred days after the original sentencing proceeding. Spear, at 201. The trial court had "misconceived the legal effect of the sentencing guidelines when imposing the original sentence and resentenced the appellant after becoming aware of this misconception." Id., at 201-202. At bar, Lormeus entered a plea of

no contest to one count of neglect to a child, a second degree felony. See § 827.03(3), Fla. Stat. (2003). During the plea conference, the crime was identified as a second degree felony. The trial court sentenced appellant to ten years in prison, but agreed to mitigate the sentence to 364 days in county jail and four years probation if appellant surrendered himself at a time certain three weeks later. The trial court granted appellant's request to take care of some personal business before sentencing. Instead of returning on the surrender date, appellant absconded to New York. See Lormeus v. State, 957 So.2d 117 (Fla. 4th DCA 2007). Extradition proceedings returned appellant to Florida and he began to serve his ten-year sentence.

Lormeus v. State, 10 So.3d 190, 191 (Fla. 4<sup>th</sup> DCA 2009). Lormeus then set the

instant events in motion by filing his 2005 Rule 3.800(a) motion containing false information that he had pled to a third degree felony, thus arguing his sentence was illegal. Id., at 191. It was based upon Lormeus' misrepresentations not any misconception by the trial court, that the sentence was reduced. Id.

Additionally, at bar the sentence imposed due to Lormeus' deceit had not yet become final. Within the proscribed 15 day period of Rule 3.800(b)(1)(B), the State learned of Lormeus' fraudulent actions and filed a motion for rehearing. Id., at 191. In Spear, the "misconception," on the part of the trial court was not caused by the defendant's misrepresentations. Furthermore, Spear does not address application of Fla. R. Crim. P. 3.800(b)(1)(B), nor is there mention that the State ever filed a timely motion for rehearing. Spear.

Finally, the instant case is not conflict with, but rather in accord with Spear. In Spear the District Court of Appeal clearly stated that,

the double jeopardy prohibition against resentencing is not absolute. **If a defendant makes an intentional and material misrepresentation as to a factual matter which induces a more lenient sentence, the defendant may not have a legitimate expectation as to the finality of the sentence and double jeopardy protections might not preclude the subsequent imposition of a corrected sentence.**

Spear, at 202. (e.s.). At bar Lormeus made "an intentional and material misrepresentation," in his September 2005 Rule 3.800 motion that he "entered a

plea to a reduced charge, a third degree felony.” Lormeus, at 191. Based upon this deceit, on October 18, 2005 the trial court granted Lormeus’ motion entering a sentence of 5 years. Id. On October 20, 2005, pursuant to the State’s emergency motion for rehearing to which was attached the plea transcript and plea sheet which both conclusively demonstrated Lormeus had in fact “entered a plea as a second degree felony.” Id., at 191.

Petitioner’s argument for this Court to accept jurisdiction must fail as his argument is without merit. To summarize, Petitioner has failed to demonstrate that there is an express or direct conflict between this case and Spear. Thus, Petitioner has failed to demonstrate the requirements 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**

Consequently, this Court should DECLINE to accept jurisdiction in this cause.

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 **ANDERSON LORMEUS, D.O.C. # L46164**, Columbia Correctional Institution – Work Camp, 216 S.E. Corrections Way, Lake City, Florida 32025, this \_\_\_\_ day of August, 2009.

\_/\_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/\_  
SUE-ELLEN KENNY  
Assistant Attorney General

# Appendix