

IN THE SUPREME COURT OF FLORIDA

CASE NO. SCO9-1148
L.T. CASE NO. 4D07-3808

LOUIS GIUNTA,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.

RESPONDENT'S BRIEF ON JURISDICTION

ON DISCRETIONARY REVIEW FROM THE
FOURTH DISTRICT COURT OF APPEAL

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STATEMENT OF THE CASE AND FACTS

Petitioner Louis Giunta was convicted of sexual battery following a jury trial. Giunta v. State, 7 So. 3d 601, 601 (Fla. 4th DCA 2009). He directly appealed the issue of whether his trial counsel was ineffective for failing to introduce alibi evidence at trial. *Id.* The evidence would not have conclusively established that he could not have committed the crime, but if believed, would have placed him in a different geographic area at a time the victim claimed she was with him at his house. *Id.* The case hinged on the victim's credibility. *Id.*

The Fourth District Court of Appeal declined to address the issue on direct appeal, noting that ineffective assistance of counsel claims are ordinarily properly raised in post conviction motions. *Id.* Rarely can they be raised and disposed of on direct appeal. *Id.* The court found that petitioner's claim had "apparent strength," but "should be tested within the procedural context of a motion for postconviction relief." *Id.* It affirmed without prejudice for petitioner to file such a motion, raising this claim "which can be more properly resolved after an evidentiary hearing." *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 this Court's decision in Blanco v. Wainwright, 507 So. 2d 1377 (Fla. 1987). In fact, Blanco is precisely on point.

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 BLANCO V. WAINWRIGHT, 507 So. 2d 1377 (Fla. 1987), 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 Blanco v. Wainwright, 507 So. 2d 1377 (Fla. 1987). 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 fact, Blanco directly supports the opinion issued in petitioner’s case.

Petitioner admits, as the Fourth District pointed out in its opinion in his case, that it is a rare exception for an appellate court to decide an ineffective assistance of counsel claim on direct appeal. However, he argues

that “the record is vast, clear and apparent” as to evidence supporting his claim. [Pet. Juris. Br. P.5] He then proceeds to outline the “evidence” he believes supports his claim. However, such “evidence” is not before this Court at this point of jurisdictional briefing.

For discretionary review based on conflict jurisdiction, this Court is limited to the facts and points of law appearing on the face of the opinion in petitioner’s case. Few facts are given in that opinion. The Fourth District Court did find—after examining the record—that while petitioner’s claim had “apparent strength” to it, the issue could not be resolved without an evidentiary hearing. Giunta, 7 So. 2d at 601. Because an evidentiary hearing would be necessary, the Fourth District affirmed without prejudice for petitioner to file a proper post-conviction motion.

Blanco illustrates the correctness of the Fourth District’s opinion. There the ineffective assistance of counsel claim was properly raised and denied in a collateral (3.850) motion, but later pursued again in a habeas corpus petition that argued the issue should have been raised first on direct appeal. 507 So. 2d at 1384. This Court disagreed, noting that rarely can such claims be raised on direct appeal, and the “proper and more effective remedy” is to raise this in a post-conviction motion, which this Court stated is “the more effective remedy.” *Id.*

There is nothing to put this case in conflict with Blanco or any other case noted by petitioner. Discretionary review is not available.

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,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been forwarded via U.S. mail to petitioner: Louis Giunta, pro se, DC# 636717, Everglades Correctional Institution, P.O. Box 949000, Miami, Florida 33194-9000 on August 4, 2009.

DIANE F. MEDLEY
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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