

IN THE SUPREME COURT OF FLORIDA

EDMOND BELCHER,

Petitioner,

Case No. SC09-1150

v.

STATE OF FLORIDA,

Respondent.

JURISDICTIONAL BRIEF OF RESPONDENT

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PRELIMINARY STATEMENT

Respondent, the State of Florida, the Appellee in the District Court of Appeal (DCA) and the prosecuting authority in the trial court, will be referenced in this brief as Respondent, the prosecution, or the State. Petitioner, Edmond Belcher, the Appellant in the DCA and the defendant in the trial court, will be referenced in this brief as Petitioner or proper name.

"PJB" will designate Petitioner's Jurisdictional Brief. That symbol is followed by the appropriate page number.

A bold typeface will be used to add emphasis. Italics appeared in original quotations, unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

The pertinent history and facts are set out in the decision of the lower tribunal, attached in published form as Belcher. v. State, 3 So. 3d 665 (Fla. 1st DCA 2009). The Respondent rejects Petitioner's statement of the case and facts which fails to limit itself to the four corners of the opinion which is reproduced in pertinent part below:

Belcher argues that the trial court erred in denying his motion for a juror interview. Belcher claims three jurors misrepresented whether they or their immediate family had been prosecuted. We affirm because the record does not reflect good

cause for bringing a motion for juror interview after the deadline imposed by the rule.

Florida Rule of Criminal Procedure 3.575 governs motions for permission to interview a juror or jurors. By rule, such motions must be filed within ten days after renditions of the verdict, unless good cause is shown for delay. Such motions must state the names of the juror(s) to be interviewed and must give the reasons the moving party believes that the verdict may be subject to challenge.

The jury rendered its verdict on February 1, 2006, and Belcher brought a motion for new trial on February 8, 2006. The motion for new trial focused on the jury instructions and the sufficiency of the evidence. The motion was denied without a hearing on February 12, 2006, but defense counsel brought it up during the sentencing hearing on March 30, 2006. Defense counsel claimed that the motion reserved the right to claim juror misconduct at hearing.*

Defense counsel then made an oral motion for a jury interview, claiming three jurors had misrepresented whether they or their family had been prosecuted. Defense counsel acknowledged the 10-day time limit under Rule 3.575. The state objected to the motion as untimely, but the trial court allowed testimony from Belcher's mother to establish when she first learned of the prosecutions.

Ms. Belcher testified that she hired a private investigator on the day after her son's conviction. She testified that the investigator obtained copies of the juror questionnaires within the ten-day window. She testified that she notified defense counsel right after she "found out on the computer about all these things so it was within just in a few days."

Defense counsel stated that, at the time he filed the motion for new trial on February 8, Ms. Belcher had not told him what she learned. The trial judge found that defense counsel had not filed an amended motion for new trial or otherwise raised allegations of juror misconduct within the time established by the rule.

We agree. The record reflects that defense counsel knew of possible juror misconduct by mid-February at the latest but did not raise the issue

until March 30, 2006. The motion for jury interview was therefore time-barred. Fla. R. Crim. P. 3.575. Belcher v. State, 3 So. 2d at 665.

SUMMARY OF ARGUMENT

Petitioner asserts that the lower court's decision below expressly and directly conflicts with the decisions in United Telephone Company of Florida v. Mayo, 345 So. 2d 648 (Fla. 1977), Philon v. Reid, 602 So. 2d 648 (Fla. 2d DCA 1992), Sims v. State, 998 So. 2d 494 (Fla. 2008), and Rios v. State, 730 So. 2d 831 (Fla. 3d DCA 1999). The "four corners" of the various decisions relied upon by Petitioner, reveal no express and direct conflict with each other on the same point of law. Therefore, this Court should exercise jurisdiction.

ARGUMENT

ISSUE I

WHETHER THE FIRST DISTRICT'S OPINION IN BELCHER V. STATE, 9 SO. 3d 665 (Fla. 1st DCA 2009), IS IN EXPRESS AND DIRECT CONFLICT WITH UNITED TELEPHONE COMPLANAY OF FLORIDA V. MAYO, 345 SO. 2D 648 (Fla. 1977), PHILON v. REID, 602 SO. 2D 648 (FLA. 2D DCA 1992), SIMS V. STATE, 998 SO. 2D 494 (FLA. 2008), AND RIOS V. STATE, 730 SO. 2D 831 (FLA. 3D DCA 1999)? (Restated)

Petitioner contends that this Court has jurisdiction pursuant to Fla. R. App. P. 9.030(a)(2)(A)(iv), which parallels Article V, § 3(b)(3), Fla. Const. The constitution provides: The supreme court ... [m]ay review any decision of a district court of appeal ... that expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law.

The conflict between decisions "must be express and direct" and "must appear within the four corners of the majority decision." Reaves v. State, 485 So.2d 829, 830 (Fla. 1986). Accord Dept. of Health and Rehabilitative Services v. Nat'l Adoption Counseling Service, Inc., 498 So.2d 888, 889 (Fla. 1986)(rejected "inherent" or "implied" conflict; dismissed petition). Neither the record, nor a concurring opinion, nor a dissenting opinion can be used to establish jurisdiction.

Reaves, supra; Jenkins v. State, 385 So.2d 1356, 1359 (Fla. 1980)("regardless of whether they are accompanied by a dissenting or concurring opinion"). Thus, conflict cannot be based upon "unelaborated per curiam denials of relief," Stallworth v. Moore, 827 So.2d 974 (Fla. 2002). 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.

In Ansin v. Thurston, 101 So. 2d 808, 810 (Fla. 1958), this Court explained: It was never intended that the district courts of appeal should be intermediate courts. The revision and modernization of the Florida judicial system at the appellate level was prompted by the great volume of cases reaching the Supreme Court and the consequent delay in the administration of justice. The new article embodies throughout its terms the idea of a Supreme Court which 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.

Accordingly, the determination of conflict jurisdiction distills to whether the District Court's decision in this case

reached a result opposite to that in Florida Telephone, Philon, Rios and Sims.

Florida Telephone is distinguishable from the instant case both on the facts and law as it is an administrative law case in which a private company sought to challenge the failure of a state agency to comply with its own administrative decisions regarding rate increases. Philon is also distinguishable on both the facts and law. There, the appellants sought review of a decision of the trial court that granted the appellee a new trial on the issue of damages in a personal injury action. Rios also does not establish the existence of conflict jurisdiction. There, Rios's conviction was reversed on direct appeal as a result of ineffective assistance of counsel. Finally, Sims also does not show the existence of express and direct conflict. There, the court allowed Sims to file a belated appeal as a result of ineffective assistance of counsel who failed to timely notify Sims that a decision had been rendered in the district court and that he may wish to seek discretionary jurisdiction before this Court.

In direct contrast to the cases relied on, the instant case involves application of Fla. R. Crim. P. 3.575 in an untimely motion for new trial where the failure to timely file the motion

was directly attributable to Petitioner's actions in failing to provide counsel with information to establish good cause.

Therefore, express and direct conflict does not exist, and this Court should decline to exercise its jurisdiction.

CONCLUSION

Based on the foregoing reason, the State respectfully requests this Honorable Court decline to accept jurisdiction.

SIGNATURE OF ATTORNEY AND CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to Edmond Belcher, Pro Se Petitioner, DOC# P21838, Gulf Correctional Institution, 500 Ike Steele Road, Wewahitchka, Florida, 32465-0010, by MAIL on ____ day of July, 2009.

Respectfully submitted and served,

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[AGO# L09-1-19273]

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the font requirements of Fla. R. App. P. 9.210.

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APPENDIX

Belcher v. State, 3 So. 3d 665 (Fla. 1st DCA 2009)