

IN THE SUPREME COURT OF FLORIDA

ARNOLD ANCRUM,

Petitioner,

v.

Case No. SC09-1770

L.T. No. 1D08-5485

Circuit Court 2008-CA-002692

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

Respondent.

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

JURISDICTIONAL ANSWER BRIEF OF RESPONDENT

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STATEMENT OF THE CASE AND FACTS

Petitioner, a state prisoner, seeks to invoke the discretionary jurisdiction of this Court to review two orders of the First District Court of Appeal. Petitioner seeks review of an order denying his motion to have co-payment monies reimbursed which states:

Petitioner's motion seeking relief to have co-payment lien monies reimbursed filed January 6, 2009, is denied. This issue is properly raised in the petition for writ of certiorari. See Gibson v. McDonough, 937 So. 2d 721 (Fla. 1st DCA 2006).

See Appendix A to Defendant's Jurisdictional Answer Brief (order of January 16, 2009, 1D08-5485).

Petitioner also seeks to invoke the jurisdiction of this Court to review the order denying him relief on June 9, 2009, which states:

By timely petition for writ of certiorari, Arnold Ancrum seeks review of the denial of his petition for writ of mandamus, in which he sought an order directing that he be transferred to a correctional institution closer to his family. In accordance with Oscar v. Florida Department of Corrections, 973 So. 2d 596 (Fla. 1st DCA 2008), we treat this proceeding as an appeal of a final order. On the merits, the circuit court correctly determined that Ancrum does not have a clear legal right to a transfer to any particular correctional institution, and that mandamus will therefore not lie to compel that result.

See Appendix B to Defendant's Jurisdictional Answer Brief (order of June 9, 2009, 1D08-5485).

SUMMARY OF THE ARGUMENT

Petitioner argues that this Court may exercise its discretionary jurisdiction to review the District Court's order based upon *express* and *direct* conflict. However, no conflict exists within the four corners of the First District's orders of January 16, 2009 and June 9, 2009. Further, no other discretionary jurisdiction exists to review either order.

JURISDICTIONAL STATEMENT

Pursuant to Article V, Section 3(b)(3), Fla. Const., 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.

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 829, 830 (Fla. 1986); 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
BETWEEN THE DECISION BELOW AND
SCHMIDT V. CRUSOE, 878 So. 2d 361 (Fla. 2003)

Petitioner erroneously appears to assert that this Court has discretionary jurisdiction over his case by claiming that the decision of the lower court is in express and direct conflict to Schmidt v. Crusoe, 878 So.2d 361 (Fla. 2003). In the instant case, the contents of the "four corners" of the decision are as follows:

Petitioner's motion seeking relief to have co-payment lien monies reimbursed filed January 6, 2009, is denied. This issue is properly raised in the petition for writ of certiorari. See Gibson v. McDonough, 937 So. 2d 721 (Fla. 1st DCA 2006).

See Appendix to Defendant's Jurisdictional Answer Brief (order of January 126, 2095, 1D08-5485).

No conflict with the case law cited by Petitioner is "expressly" apparent on the face of the order. Schmidt v. Crusoe, 878 So.2d 361 (Fla. 2003) deals with the prisoner indigency statute and holds that an inmate's petition for writ of mandamus challenging a loss of gain time is a collateral criminal proceeding and not a civil lawsuit as contemplated by the prisoner indigency statute. The First District Court of Appeal's opinion does not state whether Petitioner's petition falls within the ambit of Schmidt nor does it discuss whether his petition was a collateral criminal proceeding or a civil lawsuit. There are not enough facts given in the First District Court Appeal's order to find a conflict with the Schmidt decision. The fact that Petitioner had to draw on facts outside the "four corners" of the First District Court of Appeal's decision shows that there is no "express" and "direct" conflict evident on the face of the decision.

ISSUE II

WHETHER FLORIDA STATUTES §§ 20.315(3),
944.611, and 944.8031 CREATE A LIBERTY
INTEREST WHICH AFFORDS PETITIONER A
CONSTITUTIONAL RIGHT TO DUE PROCESS

Petitioner appears to state in his jurisdictional brief that this Court has discretionary jurisdiction to review the First District Court of Appeal's order denying his petition for

writ of certiorari. Petitioner has failed to establish discretionary jurisdiction under Rule 9.030(a)(2), Florida Rules of Appellate Procedure. The decision of the district court of appeal that Petitioner challenges does not expressly declare valid a state statute, or even mention a state statute, which could allow for discretionary jurisdiction pursuant to Rule 9.030(a)(2)(A)(i), Fla. R. App. P. It also does not expressly construe a provision of the state or federal constitution which could allow for discretionary jurisdiction pursuant to Rule 9.030(a)(2)(A)(ii), Fla. R. App. P. Nor does the decision expressly affect a class of constitutional or state officer which could allow for discretionary jurisdiction pursuant to Rule 9.030(a)(2)(A)(iii), Fla. R. App. P. The decision does not expressly and directly conflict with a decision of the Supreme Court of Florida or another District Court of Appeal on the same points of law which could allow for discretionary jurisdiction pursuant to Rule 9.030(a)(2)(A)(iv), Fla. R. App. P. In fact the only case the decision cites is a case from its own court. The First District Court of Appeal's decision does not pass upon a question certified to be of great public importance which could allow for discretionary jurisdiction pursuant to Rule 9.030(a)(2)(A)(v), Fla. R. App. P. The decision is not certified to be in direct conflict with decisions of other

district courts of appeal which could allow for discretionary jurisdiction pursuant to Rule 9.030(a)(2)(A)(vi), Fla. R. App. P. There is no order or judgment of the trial court certified by the district court of appeal in which the appeal is pending to require immediate resolution by the supreme court which could allow for discretionary jurisdiction pursuant to Rule 9.030(a)(2)(B), Fla. R. App. P. Also, there are no questions of law certified by the Supreme Court of the United States or a United States court of appeals that are determinative of the cause of action and for which there is no controlling precedent of the Supreme Court of Florida which could allow for discretionary jurisdiction pursuant to Rule 9.030(a)(2)(C), Fla. R. App. P. Therefore Petitioner has failed to raise an issue that can be presented to this Court under its discretionary jurisdiction. See Rule 9.030(a)(2), Fla. R. App. P.

CONCLUSION

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

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 ARNOLD ANCRUM, DC# 444523, Calhoun Correctional Institution, 19562 S.E. Institutional Drive, Blountstown, Florida 32424-5156 on this _____ day of November, 2009.

LaDawna Murphy

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).

LaDawna Murphy

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WALTER A. MCNEIL,
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_____/

APPENDIX TO THE JURISDICTIONAL BRIEF OF RESPONDENT

Orders of the First District

Court of Appeal issued in Ancrum v. McNeil,

1D08-5485 on January 16, 2009A

1D08-5485 on June 9, 2009B