

In The Florida Supreme Court

RECEIVED
EVERGLADES C.I.

Willie Monroe
petitioner,

v.

State of Florida
Respondent.

8/30/10
DATE
WM
INITIAL

Case No: SC10-1283

Lower Tribunal No(s): 4809-2892;

98-16736 CF10A

FILED
THOMAS D. RALL
2010 SEP -3 PM 2:13
FLORIDA SUPREME COURT
BY

Petitioner's Jurisdictional Brief

On Review from the District Court of Appeal,
Third District of Florida

Willie Monroe
DC# 235868 D2-2126
Everglades Correctional Institution
P.O. Box 949000
Miami, Florida

33194

Table of Contents

Table of Citations	iii
Statement of the Case and Facts	<u>IV</u>
Summary of the Argument.	1
Jurisdictional Statement	2
Argument	3
Conclusion	4
Certificate of Service	4

Table of Citations

Davis v. State	, 661 So.2d 1193 (Fla. 1995)	.	.	1,3
Eastwood v. State	, 834 So.2d 409 (Fla. 5DCA 2003)	.	.	1,3
Gonzalez v. State	, 816 So.2d 720 (Fla. 5DCA 2002)	.	.	1,3
Jones v. State	, 664 So.2d 1116 (Fla. 4DCA 1990)	.	.	1,3
Johnson v. State	, 18 So.3d 623 (Fla. 1DCA 2009)	.	.	1,3
Jordan v. State	, 28 So.3d 929 (Fla. 3DCA 2010)	.	.	1,3
Carson v. State	, 572 So.2d 1368 (Fla. 1991)	.	.	1,3
Mills v. State	, 642 So.2d 15 (Fla. 4DCA 1994)	.	.	<u>IV</u>
Pearsall v. State	, 965 So.2d 203 (Fla. 3DCA 2007)	.	.	1,3

Statement of The Case and Facts

On June 21, 2001 petitioner pled guilty to the offense of Second Degree murder and sentenced to 45 years. Which was 35 years in prison to be followed by 10 years of probation.

Petitioner filed a 3.800(a) motion in the trial court, alleging that petitioner's 45 year sentence was illegal as it exceeded the maximum guideline sentence, which is 410 months.

The trial court denied the motion, and petitioner appealed to the Fourth District Court of Appeal, which denied the appeal on the ground that the sentence of thirty-five years in prison with ten years probation for second degree murder was not illegal, as the statutory maximum was thirty years to life. The court cited *Mills v. State*, 642 So.2d 15 (Fla. 4th DCA 1994) (affirming a fifty year sentence for second degree murder). (See Appendix)

Petitioner filed a Notice To Invoke Discretionary Review with the Florida Supreme Court at the Fourth District Court of Appeal.

Petitioner's Jurisdictional Brief Follows:

Summary of The Argument

In this case, the Fourth District Court of Appeal held that the sentence of thirty-five years with ten years probation for second degree murder is not illegal, as the statutory maximum is thirty years to life.

The decision of the Fourth District Court of Appeal is in direct and or express conflict with the decision of this court in *Carson v. State*, 572 So.2d 1368 (Fla. 1991). And with *Eastwood v. State*, 834 So.2d 409 (Fla. 5 DCA 2003); *Pearsall v. State*, 965 So.2d 203 (Fla. 3 DCA 2007); *Gonzalez v. State*, 816 So.2d 720 (Fla. 5 DCA 2002); *Jones v. State*, 664 So.2d 1116 (Fla. 4 DCA 1990). *Johnson v. State*, 18 So.3d 623 (Fla. 1 DCA 2009); *Jordan v. State*, 28 So.3d 929 (Fla. 3 DCA 2010). *Davis v. State*, 661 So.2d 1193 (Fla. 1995).

Jurisdictional Statement

The Florida Supreme Court has discretionary Jurisdiction to review the decision of the Fourth District Court of Appeal, in that the Fourth District's decision expressly and directly conflicts with a decision of another District Court of Appeal on the same point of law. See Art. V, § 3(b)(3) Fla. Const; Fla. R. App. P. 9.030 (a)(2) (A)(iv).

Argument

This court should accept Jurisdiction because the Fourth District Court's decision is in express and direct conflict with the decision of these courts decision in *Carson v. State*, 572 so.2d 1368 (Fla. 1991); *Eastwood v. State*, 834 so.2d 409 (Fla. 5th DCA 2003); (Holding that a defendant under 3.800(a) is entitled to correction of an illegal sentence that exceeds the maximum under the 1995 guideline range); *Gonzalez v. State*, 816 so.2d 720 (Fla. 5th DCA 2002) (Holding that the combined split sentence may not exceed the maximum allowed by law); See also *Jones v. State*, 664 so.2d 1116 (Fla. 4th DCA 1990) (same); *Johnson v. State*, 18 so.3d 623 (Fla. 1st DCA 2009) (Appellant was sentenced pursuant to the sentencing guidelines, not the criminal punishment code, and Blakely makes it clear that the "statutory maximum" would be the maximum guidelines sentence that appellant could receive without the Court imposing an upward departure); *Jordan v. State*, 28 so.3d 929 (Fla. 3rd DCA 2010) (Sentence of 60 years for Second Degree murder with deadly weapon was illegal); *Davis v. State*, 661 so.2d 1193 (Fla. 1995) (Holding that an illegal sentence is defined as a sentence that exceeds the maximum period set forth by law). *Pearsall v. State*, 965 so.2d 203 (Fla. 3rd DCA 2007).

C A N C L U S I O N

This court has discretionary jurisdiction to review the decision below, and this court should exercise that jurisdiction to consider the merits of my arguments.

Respectfully submitted,
Willie Monroe

Willie Monroe

Do# L35868 B2-212 L

Certificate of Service

I hereby certify that a true and correct copy of the foregoing was served on:

- (1) Office of Attorney General
West palm Beach Regional office
1515 N. Flagler Avenue Ste. 900
West palm Beach, Florida

33401

On this 31st day of August 2010 via U.S. mail, by placing it in the hands of a prison official for mailing.

Respectfully submitted,
Willie Monroe

Willie Monroe

Do# L35868 B2-212 L

In The Florida Supreme Court

Willie Monroe
petitioner,

v.

Case No: SC10-1285

Lower Tribunal No(s): 4D09-2892;

98-16736 CF10A

State of Florida
Respondent.

APPENDIX

Willie Monroe
DC# L35868 D2-212C
Everglades Correctional Inst.
P.O. Box 949000
Miami, Florida
33194

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2010

WILLIE MONROE,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D09-2892

[June 9, 2010]

PER CURIAM.

Affirmed. Appellant's sentence of thirty-five years in prison with ten years probation for second degree murder is not illegal, as the statutory maximum is thirty years to life. See §§ 782.04(2), 775.082(3)(b), Fla. Stat. (1997); see also *Mills v. State*, 642 So. 2d 15 (Fla. 4th DCA 1994) (affirming a fifty year sentence for second degree murder).

WARNER, DAMOORGIAN and LEVINE, JJ., concur.

* * *

Appeal of order denying rule 3.800 motion from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Mily Rodriguez-Powell, Judge; L.T. Case No. 98-16736 CF10A.

Willie Monroe, Miami, pro se.

No response required for appellee.

Not final until disposition of timely filed motion for rehearing.