

IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. SC 10-1285

(4th DCA 4D09-2892)

WILLIE MONROE,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

RESPONDENT'S BRIEF ON JURISDICTION

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PRELIMINARY STATEMENT

Petitioner was the Defendant and Respondent was the prosecution in the Criminal Division of the Circuit Court of the Nineteenth Judicial Circuit, in and for St. Lucie County, Florida. Petitioner was the Appellant and Respondent was the Appellee in the Fourth District Court of Appeal. In this brief, the parties shall be referred to as they appear before this Honorable Court except that Respondent may also be referred to as the State.

In this brief, the symbol "A" will be used to denote the appendix attached hereto.

All emphasis in this brief is supplied by Respondent unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

The only relevant facts to a determination of this Court's discretionary jurisdiction under Article V, Section 3(b)(3) of the Florida Constitution are those set forth in the appellate opinion sought to be reviewed:

Monroe v. State, 36 So. 3d 930 (Fla. 4th DCA 2010).

(See Petitioner's Appendix)

SUMMARY OF THE ARGUMENT

THE DECISION OF THE FOURTH DISTRICT COURT DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH A DECISION OF ANOTHER CIRCUIT COURT OR THE SUPREME COURT.

Petitioner seeks this Court's review under Florida Rule of Appellate Procedure, Rule 9.030(a)(2)(iv) which provides that discretionary jurisdiction of the supreme court may be sought to review, arguing that the opinion of Fourth District Court of Appeals expressly and directly conflict with a decision of another district court of appeal or of the supreme court on the same question of law. The State maintains that the cases cited by Appellant do not create a direct or express conflict with the Fourth District's Opinion in this case.

ARGUMENT

THE DECISION OF THE FOURTH DISTRICT COURT DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH A DECISION OF ANOTHER DISTRICT COURT OR THE SUPREME COURT.

Petitioner seeks this Court's review under Florida Rule of Appellate Procedure, Rule 9.030(a)(2)(iv) which provides that discretionary jurisdiction of the supreme court may be sought to review arguing the opinion 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 State argues that the Fourth's District's decision in this case does not expressly and directly conflict with a decision from any district court of appeal or of the Supreme Court on the same question of law. Therefore, discretionary jurisdiction should be denied.

In the case at bar, the Fourth District Court of Appeals held:

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 30 years to life. See Section 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).

Monroe v. State, 36 So. 3rd 930 (Fla. 4th DCA 2010).

The Fourth District cited to Mills v. State, 642 So. 2d 15 (Fla. 4th DCA 2010), which held that a fifty year sentence was not

excessive in light of the fact that the statute authorized sentence not to exceed life imprisonment.

Petitioner argues that the Fourth District's opinion conflicts with several cases from other District Courts of Appeal. The State argues that the cases cited by Petitioner do not conflict with the Fourth District's opinion in this case. Therefore this Court does not have conflict jurisdiction to consider the case.

In Davis v. State, 661 So. 2d 1193 (Fla. 1995), This Court defined an illegal sentence as one that exceeds the maximum period set forth by law for a particular offense without regard to the guidelines. In Johnson v. State, 18 So. 3d 623(Fla. 1st DCA 2009), the Court held that the statutory maximum is the maximum guideline sentence that Appellant could have received without the imposition of an upward departure. In Eastwood v. State, 834 So. 2d 409 (Fla. 5th DCA 2003, the Court found Appellant was entitled to correction of an illegal sentence that exceeded the maximum guidelines. In Gonzalez v. State, 816 So. 2d 720 (Fla. 5th DCA 2002), the Court held that Defendants sentence was illegal because the combined prison and probation terms exceeded the statutory maximum for the crime. In Jones v. State, 664 So. 2d 1116 (Fla. 4th DCA 1996), the Court held that the 35 year cumulative length of the split sentence

exceeded the statutory maximum of 30 years and therefore was illegal. In Jordan v. State, 28 So. 3d 929 (Fla.3d DCA 2010), the Court held that defendant's sentences were illegal because they exceeded the statutory maximums for the crimes. In Pearsall v. State, 965 So. 2d 203 (Fla. 3d DCA 1994), the court found the sentence was illegal because it exceeded the statutory maximum. Appellant cites to Larson v. State, 572 So. 2d 1368 (Fla. 1991), however, this case does not present a question concerning whether a sentence exceeded the statutory maximum sentence.

Based on the foregoing arguments, the State maintains that Petitioner has failed to show that any conflict exists with another district court of this Honorable Court. Therefore, there is no conflict jurisdiction and this Petitioner must be denied.

CONCLUSION

WHEREFORE, based on the foregoing arguments and the authorities cited therein, Respondent respectfully requests this Court DENY Petitioner's request for discretionary review over the instant 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 to Willie Monroe, DC#L35868, Everglades Correctional Institution, PO Box 949000, Miami, FL 33194 on this ____ day of October, 2010.

Of Counsel

CERTIFICATE OF TYPE SIZE AND STYLE

In accordance with Florida Rule of Appellate Procedure 9.210, counsel for the State of Florida, hereby certifies that the instant brief has been prepared with 12 point Courier New type, a font that is not proportionately spaced.

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