

IN THE SUPREME COURT OF FLORIDA

TERRY CARSON,

Petitioner,

v.

STATE OF FLORIDA,

Respondent

PROVIDED TO BAKER CI
ON 7-20-10
FOR MAILING TC

Case No.: SC10-1294

DCA Case No.: 1D09-5698

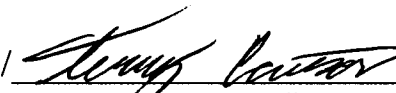
Lower Tribunal No(s): 16-2007-cf-1400

PETITIONER'S AMENDED JURISDICTIONAL BRIEF

On Review from the District Court of Appeal, First District

State of Florida

/S/



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STATEMENT OF THE CASE AND FACTS

The respondents was the prevailing party in an action to determine whether the petitioner, a prisoner acting as a pro se litigant, was given an “illegal” drug offender probation sentence.

Following the rendition of the order in the lower tribunal, the petitioner filed an appeal in the First District Court of Appeal to review the lower court’s order.. The district court declined to reverse and remand and therefore, denied the petitioner’s claim.

But, in rendering its decision, the district court certified a question and affirmed the decision of the lower court in a sixteen page opinion that was clearly in conflict with this Honorable Court’s laws and the decisions of other existing district courts. (See Appendix A, District Court’s written opinion)

SUMMARY OF THE ARGUMENTS

Argument I.) In this case, the district court of appeal rendered a decision in direct conflict with the decision in *Haggerty v. State*, App. 4th Dist., 632 So.2d 668 (Fla. 4th DCA 1994). (See Appendix A, page 11)

In *Haggerty*, the 4th District Court clearly stated that, “Because we adopt the requirement on orders summarily denying relief on rule 3.800(a) motions, that the

trial court must attach portions of the record sufficient to refute allegations of a facially sufficient motion to correct an illegal sentence, see Thomas v. State, 634 So.2d 175 (Fla. 1st DCA 1994), we reverse and remand for further proceedings..”

It must be considered that the first district court’s decision in petitioner’s case is not only in direct conflict with the decision in *Haggerty*, but also the first district’s own decision in Webb v. State, 642 So.2d 782, 783 (Fla. 1st DCA 1994) and *Thomas*, Id. at 634 So.2d 175 and this Honorable Supreme Court’s rule of law in the Florida Rules of Appellate Procedure 9.141 (b)(2)(A) and (D).

See Matthews v. State, 596 So.2d 79 (Fla. 2d DCA 1991) and Moncher v. State, 23 So.3d 873 (Fla. 4th DCA 2009). Therefore, the Petitioner comes into this court for corrections of the First District Court’s conflict of existing law on this issue.

Argument II.) In this case, the district court of appeal rendered a decision in direct conflict with the decision of this court in Williams v. State, 500 So.2d 501 (Fla.1986), where this Honorable Supreme Court stated that, “A trial court cannot impose an illegal sentence pursuant to a plea bargain.” (See **Appendix A, pg. 5-7**)

The First District Court, on page 5 of their opinion in this case, stated that the holdings of the Supreme Court are neither controlling nor persuasive because the Supreme Court receded from its perceived holding in *Williams*. Petitioner

contends that the First District is incorrect and the Petitioner comes into this Honorable Supreme Court with clean hands seeking correction.

It is clear from previous holdings by the First District that they have agreed that a plea bargain cannot justify the imposition of an illegal sentence. See generally Darling v. State, 886 So.2d 417, 418 (Fla. 1st DCA 2004); Bruno v. State, 837 So.2d 521, 523 (Fla. 1st DCA 2003)(same); Wright v. State, 743 So.2d 103 (Fla. 1st DCA 1999)(same); Taylor v. State, 899 So.2d 1191, 1192 (Fla. 1st DCA 2005)(same); Leavitt v. State, 810 So.2d 1032, 1033 (Fla. 1st DCA 2002)(same); Kinney v. State, 808 So.2d 1285 (Fla. 1st DCA 2002)(same); Debord v. State, 802 So.2d 528 (Fla. 1st DCA 2001)(same); Blanchette v. State, 620 so. 2d 258 (Fla. 1st DCA 1993)(same); Herbert v. State, 600 So.2d 1293 (Fla. 1st DCA 1992)(same).

Argument III.) The decision of the First District Court of Appeal in this case expressly and indirectly conflicts with the decision of the Fourth District Court in Epperson v. State, 955 So.2d 642 (Fla.4th DCA 2007), where the court held that: “A court may not impose drug offender probation other than for the violation of a drug related offense listed in the drug offender probation statute, section 948.034.

(See Appendix A, page 1-2)

Argument IV.) The decision of the First District Court of Appeal in this case expressly and indirectly conflicts with the decision of the Fifth District Court in the case of *Thomas v. State*, 932 So.2d 1221 (Fla. 5th DCA 2006).

The fifth district in the case of *Thomas* declared that: [1] [2] "To be illegal within the meaning of rule 3.800(a)[,] the sentence must impose a kind of punishment that no judge under the entire body of sentencing statutes could possibly inflict under any set of factual circumstances." In order to obtain relief pursuant to rule 3.800(a), the claim must establish a basis for relief from the face of the record.

It must be considered that the Petitioner met the pleading requirement of rule 3.800 when he alleged that: (1) he is serving an illegal sentence; (2) the error appears on the face of the record; and (3) how and where the record demonstrates an entitlement to relief. In this instance, the Petitioner put forth a valid claim for relief and therefore, the first district's decision was in direct conflict with the decision in *Thomas*.

JURISDICTIONAL STATEMENT

The Florida Supreme Court has discretionary jurisdiction to review a decision of a district court of appeal that expressly and directly conflicts with a

decision of the Supreme Court or another district court of appeal on the same point of law. Art. V, § 3(b)(3) Fla. Const. (1980); Fla.R.App.P. 9.030(a)(2)(A)(iv).

ARGUMENT I

The decision of the First District Court of Appeal in this case expressly and indirectly conflicts with the decision of the 4th District Court in *Haggerty v. State*, App. 4th Dist., 632 So.2d 668 (Fla. 4th DCA 1994).

The district court of appeal rendered a ruling in the Petitioner's case that was contrary to the holding in *Haggerty v. State*, App. 4th Dist., 632 So.2d 668 (Fla. 4th DCA 1994), where the 4th District held that the trial court must attach portions of the records in summary denying postconviction motions under rule 3.850 and rule 3.800(a).

Petitioner contends that in *Haggerty* at 632 page 668, the fourth district court makes reference to the first district's ruling in the case of *Thomas v. State*, 634 So.2d 175 (Fla. 1st DCA 1994) on the same point of law dealing with trial court orders attaching portions of the records.

Based on the fact that the first district has long held that trial court orders must be accompanied by attached portions of the records to demonstrate that the Petitioner is entitled to no relief, the first district has erred in affirming the Petitioner rule 3.800(a) without record attachments.

As explained above, the first district's decision in Petitioner's case is in conflict with not only the fourth district's decision in Haggerty but also the first district's own ruling in Thomas.

ARGUMENT II

In this case, the district court of appeal rendered a decision in direct conflict with the decision of this court in Williams v. State, 500 So.2d 501 (Fla.1986), where this Honorable Supreme Court stated that, "A trial court cannot impose an illegal sentence pursuant to a plea bargain."

In the instant case, the Petitioner was given drug offender probation for an offense that did not qualify him for that type of probation. This court has held in the case of Lawson v. State, 969 So. 2d 222,231 (Fla. 2007) that court ordered drug offender probation is available to defendants who "Qualify" for drug offender probation based on the nonviolent nature of the crime... and their status as chronic substance abusers." See id at 969 page 231. In the Petitioner's case, he simply did not "qualify" for the probation and could not entered into an agreement to accept an illegal probation sentence. The Petitioner cited Williams in the first district court for his proposition that the trial court could not impose an illegal sentence pursuant to a plea bargain.

The first district court of appeal has interpreted Williams to have been receded from by this Honorable Court in the holding of Quarterman v. State, 527

So.2d 1380 (Fla. 1988) concerning a trial court imposing an illegal sentence pursuant to a plea bargain. The first district has rendered conflict in the Petitioner's case.

Petitioner contends that this court has distinguished the facts in *Quarterman* from its previous decision in *Williams* by stating that it perceived the issue in *Williams* to be whether it was permissible to deviate from the guidelines based on the defendant's failure to appear, which was a crime for which the defendant was not convicted. This court clarified that under the circumstances in *Quarterman*, the plea bargain itself served as a clear and convincing reason for departure and the court receded from any language in *Williams* contrary to that proposition.

Petitioner further contends that even in a more recent opinion of this court in *Larson v. State*, 572 So. 2d 1368 (Fla. 1991), this court held that: "A defendant cannot confer on others a right to do something the law does not permit." See also *Bates v. State*, 750 So.2d 6, 11 (Fla. 1999). Therefore, the first district court erred as a matter of law in making a decision in the Petitioner's case that was contrary to this Honorable Court's decision in *Williams*.

ARGUMENT III

The decision of the First District Court of Appeal in this case expressly and indirectly conflicts with the decision of the Fourth District Court in *Epperson v. State*, 955 So.2d 642 (Fla.4th DCA

2007), where the court held that: “A court may not impose drug offender probation other than for the violation of a drug related offense listed in the drug offender probation statute, section 948.034.

The district court of appeal in the Petitioner’s case stated on page 4 of their opinion (**See Appendix A**) that the Petitioner’s sentence is not illegal because he accepted a plea agreement for “Drug Offender Probation”. In doing so, the court has cited Ackerman v. State, 962 So.2d at 407 (Fla. 1st DCA 2007) for their proposition that once a defendant willingly accepts drug offender probation (although he does not have a qualifying offense for drug offender probation), he cannot later challenge the sentence as illegal.

Petitioner contends that this proposition is contrary to the holding of the fourth district court in *Epperson, supra*. In *Epperson* the defendant entered a negotiated plea to attempted burglary and grand theft. He then later filed a postconviction motion 3.800(a) alleging that his sentence to drug offender probation was illegal. The fourth district held that grand theft was not an enumerated drug-related offense for which drug offender probation could be imposed. The Petitioner’s case is synonymous to *Epperson*.

The fourth district court correctly interpreted Legislature’s intent for (2007) Florida Statutes §948.034 and §948.20. The fourth district also followed this

court's precedence put forth in the case of Lawson v. State, 969 So.2d 222 (Fla. 2007) (stating that treatment and intensive surveillance, rather than incarceration, is available to defendants who qualify [for drug offender probation] based on the nonviolent nature of the crime ... and their status as chronic substance abusers.) This Honorable Supreme Court has clearly laid out the law for all existing districts courts and circuit courts to follow.

ARGUMENT IV

The decision of the First District Court of Appeal in this case expressly and indirectly conflicts with the decision of the Fifth District Court in the case of Thomas v. State, 932 So.2d 1221 (Fla. 5th DCA 2006).

[1] [2] "To be illegal within the meaning of rule 3.800(a)[,] the sentence must impose a kind of punishment that no judge under the entire body of sentencing statutes could possibly inflict under any set of factual circumstances." Carter v. State, 786 So.2d 1173, 1178 (Fla.2001) (quoting Blakley v. State, 746 So.2d 1182, 1186-87 (Fla. 4th DCA 1999)). In order to obtain relief pursuant to rule 3.800(a), the claim must establish a basis for relief from the face of the record. Harris v. State, 902 So.2d 292, 292 (Fla. 3d DCA 2005).

The Petitioner has clearly met the pleading requirements in his rule 3.800(a) when he alleged (1) he is serving an illegal sentence; (2) the error appears on the face of the record; and (3) how and where the record demonstrates an entitlement

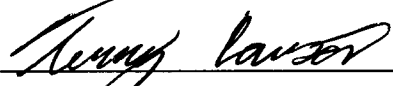
to relief. Therefore, the First District Court's decision is in direct conflict with the decision in Thomas.

CONCLUSION

This court has discretionary jurisdiction to review the decision below, and the court should exercise that jurisdiction to consider the merits of the Petitioner's arguments based on the fact that the Petitioner has been deprived of his due process rights of the United States Constitution Fourteenth Amendment and Eighth Amendment. This court should correct the error to prevent a manifest injustice.


CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Jurisdiction Brief has been placed in the hands of prison officials for mailing by U.S. Mail to: Office of the Attorney General, PL-01 The Capitol, Tallahassee, FL 32399-1050 on this 20th day of July 2010.

/s/ 
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CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY, that this brief complies with the font requirements of rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

/s/ 
Terry Carson, DC# 313553