

IN THE SUPREME COURT OF FLORIDA

DAVID I EPPS,

Petitioner,

Case No. SC10-1315

v.

WALTER A. MCNEIL,

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, David I. Epps, 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, followed by any appropriate page number.

STATEMENT OF THE CASE AND FACTS

The State rejects Petitioner's statement of the case and facts as extending beyond the "four corners" of the district court's decision. See Reaves v. State, 485 So. 2d 829 (Fla. 1986)(stating that the only facts relevant to a decision to accept jurisdiction based on an alleged decisional conflict are those facts contained within the "four corners" of the decisions allegedly in conflict).

The pertinent history and facts are set out in the decision of the First District Court (DCA) which can be found at Epps v. State, 37 So.3d 923 (Fla. 1st DCA 2010). The entire decision reads as follows:

Appellant argues that his sentence is illegal and, accordingly, that his petition for writ of habeas corpus must be granted to correct a manifest injustice. Because the petition was not filed in the sentencing court, the circuit court lacked jurisdiction to address his claim on the merits. See *Crockett v. Singletary*, 723 So.2d 911, 912 (Fla. 1st DCA 1999). Accordingly, we affirm the dismissal of Appellant's petition for writ of habeas corpus, which was without prejudice to his right to seek relief in the sentencing court. See *Zuluaga v. State, Department of Corrections*, 32 So.3d 674 (Fla. 1st DCA 2010) (affirming the dismissal of a petition for writ of habeas corpus where the petitioner challenged the legality of his sentence and the circuit court's dismissal was without prejudice to the petitioner's right to seek proper relief in the sentencing court); cf. *Davis v. State*, 26 So.3d 647, 650 (Fla. 2d DCA 2010) (reversing and remanding for transfer where the circuit court denied an apparently meritorious petition for writ of habeas corpus without indicating that it could be re-filed in the appropriate court).

AFFIRMED.

SUMMARY OF ARGUMENT

An examination of the operative facts and principles of law contained in the "four corners" of the DCA's decision reveals no express and direct conflict with the decision of this Alachua Regional Juvenile Detention Center v. T.O., 684 So. 2d 814 (Fla. 1996). Petitioner has not established a constitutional basis for this Court to exercise its conflict jurisdiction. Therefore, jurisdiction should be declined.

ARGUMENT

ISSUE I

HAS PETITIONER SHOWN EXPRESS AND DIRECT CONFLICT BETWEEN THE DECISION BELOW AND THIS COURT'S DECISIONS IN ALACHUA REGIONAL JUVENILE DETENTION CENTER v. T.O., 684 So.2d 814 (Fla. 1996)? (Restated)

Appellate Standard of Review and Jurisdictional Criteria

The applicable standard of review for claims of direct and express conflict is *de novo* subject to the following criteria.

Petitioner seeks discretionary review 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 the only relevant facts for the determination of discretionary jurisdiction 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)(rejecting "inherent" or "implied" conflict; dismissing petition). Neither the record, nor a concurring

opinion, nor a dissenting opinion can be used to establish jurisdiction. Reaves, supra. It is the "conflict of *decisions*, not conflict of *opinions* or *reasons* that supplies jurisdiction for review by certiorari." Jenkins v. State, 385 So. 2d 1356, 1359 (Fla. 1980). Conflict jurisdiction is present only when decisions which interpret the same principles of law are applied to indistinguishable facts. See Department of Revenue v. Johnston, 442 So.2d 950 (Fla. 1983).

In Ansin v. Thurston, 101 So.2d 808 (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.

Id. at 810.

Accordingly, the determination as to whether conflict jurisdiction exists in this case distills to whether the district court's decision in the instant case reached a result opposite Alachua Regional Juvenile Detention Center v. T.O., 684 So. 2d 814 (Fla. 1996).

The decision below upheld the circuit court's dismissal of Petitioner's petition for writ of habeas corpus. The entire decision of the First District Court reads as follows:

Appellant argues that his sentence is illegal and, accordingly, that his petition for writ of habeas corpus must be granted to correct a manifest injustice. Because the petition was not filed in the sentencing court, the circuit court lacked jurisdiction to address his claim on the merits. See *Crockett v. Singletary*, 723 So.2d 911, 912 (Fla. 1st DCA 1999). Accordingly, we affirm the dismissal of Appellant's petition for writ of habeas corpus, which was without prejudice to his right to seek relief in the sentencing court. See *Zuluaga v. State, Department of Corrections*, 32 So.3d 674 (Fla. 1st DCA 2010) (affirming the dismissal of a petition for writ of habeas corpus where the petitioner challenged the legality of his sentence and the circuit court's dismissal was without prejudice to the petitioner's right to seek proper relief in the sentencing court); *cf. Davis v. State*, 26 So.3d 647, 650 (Fla. 2d DCA 2010) (reversing and remanding for transfer where the circuit court denied an apparently meritorious petition for writ of habeas corpus without indicating that it could be re-filed in the appropriate court).

AFFIRMED

Id.

In Alachua Regional, a juvenile was detained pursuant to a detention order issued by a circuit court located within the territorial jurisdiction of the Fifth District. The place of detention, however, was located within the territorial jurisdiction of the First District. After the juvenile's motion for release was denied by the circuit court, he filed a petition for a writ of habeas corpus in the First District. In granting relief, the First District certified to this Court as a question of great public importance the question of whether, in light of the fact that the order detaining the juvenile was entered by a circuit court located in another district, it was the proper court to consider the petition. This Court held that "it appears that a district court of appeal does not have the constitutional power to issue a writ directed to a person outside the district court's territorial jurisdiction." Further, "the proper respondent in a habeas corpus petition is the party that has actual custody and is in a position to physically produce the petitioner." The Court concluded that "the Fifth District Court could not have issued the writ." The Court went on to consider the question of whether the First District, "not having supervisory or appellate jurisdiction over the . . . court" that issued the detention order, "had the authority to review its detention order." In concluding that

the First District did have such jurisdiction, the Court pointed out that certain restrictions apply under such circumstances. When a court entertaining a habeas corpus petition does not have supervisory or appellate jurisdiction over the court that entered the order or other process under challenge, the scope of the reviewing court's inquiry is limited to whether the court that entered the order was without jurisdiction to do so or whether the order is void or illegal. Also, a reviewing court may not discharge the detainee if the detention order is merely defective, irregular, or insufficient in form or substance. Id. at 814-816.

Petitioner has pointed to no express or direct conflict between the DCA's decision in his case and the decision in Alachua Regional. As previously stated, conflict jurisdiction exists only when decisions which interpret the same principles of law are applied to indistinguishable facts. Department of Revenue v. Johnston, 442 So. 2d 950 (Fla. 1983). This Court's decision in Alachua Regional neither involves similar facts nor the same question of law determined by the DCA in the instant case and, thus, cannot be the basis for a finding of express and direct conflict. Review should be declined.

CONCLUSION

There is no constitutional basis for discretionary jurisdiction. The petition should be denied.

SIGNATURE OF ATTORNEY AND CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to David I. Epps, DC# 092885, Union Correctional Institution, 7819 N.W. 228th Street, Raiford, Florida 32026, by MAIL on August 18th, 2010.

Respectfully submitted and served,

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CERTIFICATE OF COMPLIANCE

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

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