

IN THE SUPREME COURT OF FLORIDA

WINSTON WILKINS,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

Case No. SC12-13

L.T. Case Nos. 4D11-4049, 4D11-4051, 4D11-4052

**ON DISCRETIONARY REVIEW FROM THE
FOURTH DISTRICT COURT OF APPEAL**

RESPONDENT'S BRIEF ON JURISDICTION

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STATEMENT OF THE CASE AND FACTS

For purposes of this brief, the State accepts petitioner's statement of the case and facts.

SUMMARY ARGUMENT

This Court should decline to review the instant case because there no express and direct conflict between the instant case and any decision of this Court, or any other District Court of Appeal. Petitioner's brief does not address the threshold issue of jurisdiction and merely attempts to argue the merits of substantive matters in the case. Accordingly, this Court should decline to exercise its jurisdiction to hear this case.

ARGUMENT

THERE IS NO BASIS FOR DISCRETIONARY REVIEW OF THE DECISION OF THE DISTRICT COURT

Petitioner apparently seeks to invoke the discretionary jurisdiction of this Court pursuant to Article V, section 3(b)(3), of the Constitution of the State of Florida. This section grants this Court discretionary jurisdiction to 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.” Id.; see also Fla. R. App. P. 9.030(a)(2)(A)(iv). However, Petitioner fails to allege how the Fourth District’s decision in the instant case conflicts with a decision of this Court, or any other district court of appeal. For the reasons set forth below, it is clear that there is no conflict and the Court should decline to exercise its jurisdiction to hear this case.

According to Florida Rule of Appellate Procedure 9.120(d), Petitioner’s brief is limited solely to the issue of jurisdiction. Petitioner’s brief in this case, however, improperly raises substantive issues. The committee notes to Rule 9.120(d) states that “[i]t is not appropriate to argue the merits of the substantive issues involved in the case or discuss any matters not relevant to the threshold jurisdictional issue.” Since Petitioner’s brief merely raises substantive issues, and

does not address the threshold jurisdictional issue, the Court should decline to accept jurisdiction in this case.

Even if Petitioner had raised a jurisdictional argument in his brief, which he did not, any such argument would have failed. The Fourth District's ruling in this case summarily denied Petitioner's three petitions for writs of error coram nobis pursuant to this Court's decisions in Gore v. State, 67 So. 3d 1049 (Fla. 2011) and Wood v. State, 750 So. 2d 592 (Fla. 1999). The Fourth District's order below does not expressly and directly conflict with any decision of this Court or any other District Court of Appeal. Therefore, this Court does not have jurisdiction under Rule 9.030(a)(2)(iv) to review this case.

CONCLUSION

WHEREFORE based on the foregoing arguments and authorities cited herein, the Respondent respectfully requests this Honorable Court to decline to exercise its jurisdiction to hear this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this brief has been furnished via U.S. MAIL to: WINSTON WILKINS, pro se, Fed. Reg. No. 53115-004, Federal Correctional Institution, P.O. Box 7007, Marianna, FL 32447-7007 on January 31, 2012.

RICHARD VALUNTAS
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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief has been prepared with Times New Roman 14 point type and complies with the font requirements of Rule 9.210.

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