

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC12-60

Lower Tribunal No. 3D10-722

WILLIAM GARRIDO,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

* * * * *

ON PETITION FOR DISCRETIONARY REVIEW
FROM THE THIRD DISTRICT COURT OF APPEAL

* * * * *

RESPONDENT'S BRIEF ON JURISDICTION

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INTRODUCTION

The Petitioner was the appellant and the defendant, respectively in the lower courts. The Respondent, the State of Florida, was the appellee in the Third District Court of Appeal and the prosecution in the trial court of the Eleventh Judicial Circuit, in and for Miami-Dade County. In this brief, the parties will be referred to as they appear before this Honorable Court.

The symbol "A." refers to the Appendix attached to this jurisdictional brief, which solely includes a conformed copy of the district court's opinion. Unless otherwise indicated, all emphasis has been supplied by Petitioner.

STATEMENT OF THE CASE AND FACTS

Following a jury trial, Petitioner was convicted of second degree murder. On direct appeal, Petitioner argued that the trial court fundamentally erred by giving the 2008 amended jury instruction on the lesser included offense of manslaughter, thereby erroneously requiring the jury to find that he intended to kill the victim. In its opinion, the Third District Court of Appeal rejected Petitioner's contention based on its prior decision in Figueroa v. State, Case No. 3D10-27 (Fla. 3d DCA Nov. 16, 2011), which held that this Court's decision in State v. Montgomery, 39 So. 3d 252 (Fla. 2010), did not apply where the trial court gave the amended 2008 manslaughter instruction since that instruction cured the harm addressed by the Court in Montgomery. (A. 2). As it did in Figueroa, the district court certified express and direct conflict with the First District's decisions in Noack v. State, 61 So.3d 1208 (Fla. 1st DCA 2011); Riesel v. State, 48 So. 3d 885 (Fla. 1st DCA 2010), rev. denied, State v. Riesel, 66 So. 3d 304 (Fla. 2011); and Pryor v. State, 48 So. 3d 159 (Fla. 1st DCA 2010). (A. 2).

Additionally, in its opinion the Third District certified the following question to this Court as being one of great public importance:

IF A JURY RETURNS A VERDICT FINDING A DEFENDANT GUILTY OF SECOND-DEGREE MURDER IN A CASE WHERE THE EVIDENCE DOES NOT SUPPORT A THEORY OF CULPABLE NEGLIGENCE, DOES A TRIAL COURT COMMIT FUNDAMENTAL ERROR BY GIVING A FLAWED MANSLAUGHTER BY ACT INSTRUCTION WHEN IT ALSO GIVES AN INSTRUCTION ON MANSLAUGHTER BY CULPABLE NEGLIGENCE?

Thereafter, Petitioner filed his notice to invoke the discretionary jurisdiction of this Court.

This jurisdictional brief followed.

SUMMARY OF THE ARGUMENT

This Court has discretionary jurisdiction in this cause since the decision below certified express and direct conflict with the First District Court of Appeal's decisions in Noack v. State, 61 So.3d 1208 (Fla. 1st DCA 2011); Riesel v. State, 48 So. 3d 885 (Fla. 1st DCA 2010), rev. denied, State v. Riesel, 66 So. 3d 304 (Fla. 2011); and Pryor v. state, 48 So. 3d 159 (Fla. 1st DCA 2010). The exercise of this Court's discretionary jurisdiction is necessary to resolve the existing conflict among appellate decisions concerning the applicability of State v. Montgomery, 39 So. 3d 252 (Fla. 2010), to cases, like Petitioner's here, in which the amended 2008 manslaughter jury instruction was given. Additionally, since the Third District also certified a question of great public importance in its decision, this Court has discretionary jurisdiction to review this case to decide that question.

ARGUMENT

THIS COURT HAS DISCRETIONARY JURISDICTION IN THIS CAUSE SINCE THE DECISION BELOW CERTIFIED EXPRESS AND DIRECT CONFLICT WITH THE FIRST DISTRICT COURT OF APPEAL'S DECISIONS IN NOACK v. STATE, 61 SO.3d 1208 (FLA. 1st DCA 2011); RIESEL v. STATE, 48 SO. 3d 885 (FLA. 1st DCA 2010); AND PRYOR V. STATE, 48 SO. 3d 159 (Fla. 1st DCA 2010).

The State agrees with Petitioner that, based on the Third District's certification of direct conflict with decisions of the First District Court of Appeal, this Court has discretionary jurisdiction to review this case, should it so choose. See Article V, Section 3(b)(3), Fla. Const. (1980) and Fla. R. App. P. 9.030(a)(2)(A)(vi), providing that the discretionary jurisdiction of the Supreme Court may be sought to review a decision of a district court of appeal which is certified to be in direct conflict with a decision of another district court of appeal. The exercise of this Court's discretionary jurisdiction is necessary to resolve conflict with the decisions of the First District Court of Appeal cited in the Third District's opinion concerning the applicability of State v. Montgomery, 39 So. 3d 252 (Fla. 2010), to cases, like Petitioner's here, in which the amended 2008 manslaughter jury instruction was given.

Because the Third District also certified a question of great public importance in its decision, this Court has

discretionary jurisdiction to review this case on this additional basis. See Fla. R. App. P. 9.030(a)(2)(A)(v) (providing that the discretionary jurisdiction of the Supreme Court may be sought to review a decision of a district court of appeal that passes upon a question certified to be of great public importance).

CONCLUSION

Wherefore, based upon the foregoing argument and authorities cited herein, Respondent respectfully requests that this Honorable Court to accept discretionary jurisdiction of this cause to resolve conflict between the Third District's opinion and decisions of the First District Court of Appeal concerning the applicability of State v. Montgomery, 39 So. 3d 252 (Fla. 2010), to cases where the amended 2008 manslaughter jury instruction was given.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Respondent's Brief on Jurisdiction was furnished by U.S. Mail to Thomas Regnier, Asst. Public Defender, Counsel for Respondent, 1320 NW 14th Street, Miami, FL 33125, on this 31st day of January, 2012.

DOUGLAS J. GLAID
Senior Assistant Attorney General

CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the 12 point Courier New font used in this brief complies with the requirements of Fla. R. App. P. 9.210(a)(2).

DOUGLAS J. GLAID
Senior Assistant Attorney General

APPENDIX