

IN THE SUPREME COURT OF FLORIDA

ANTHONY W. RITZ, JR.,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Case No. SC12-83
4th DCA Case No. 4D11-4047

RESPONDENT'S BRIEF ON JURISDICTION

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TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES	ii
STATEMENT OF THE CASE AND FACTS	1
SUMMARY OF THE ARGUMENT	1
ARGUMENT	1
THE ORDER OF THE FOURTH DISTRICT COURT OF APPEAL NOT DOES NOT CONFLICT WITH ANY DECISION OF THIS COURT OR OF ANOTHER DISTRICT COURT OF APPEAL.	
CONCLUSION	4
CERTIFICATE OF SERVICE	5
CERTIFICATE OF TYPEFACE COMPLIANCE	5

TABLE OF AUTHORITIES

STATE CASES

Goldsmith v. State, 937 So. 2d 1253 (Fla. 2d DCA 2006).....2, 3

Johnson v. State, 974 So. 2d 363 (Fla. 2008).....2

Jones v. Peninsula Motor Club, Inc., 558 So. 2d 517 (Fla. 1st DCA 1990).....2, 3

Logan v. State, 846 So. 2d 472 (Fla. 2003).....2, 3

Reaves v. State, 485 So. 2d 829 (Fla. 1986).....1

Sheppard v. State, 17 So. 3d 275 (Fla. 2009).....2

Taylor v. Tampa Electric Co., 356 So. 2d 269 (Fla. 1978).....2

Zingale v. Powell, 885 So. 2d 277 (Fla. 2004).....2

STATEMENT OF THE CASE AND FACTS

Petitioner seeks to appeal an order issued by the Fourth District Court of Appeal on November 28, 2011. The order states the following:

Petitioner's October 19, 2011 petition for writ of prohibition is hereby denied on the merits; further,

To the extent that Petitioner expresses his wish to discharge his appellate counsel, his request is denied. Appellant is not entitled to represent himself on appeal, and it is within the court's discretion whether to allow such representation. See Martinez v. Court of Appeal of California, 528 U.S. 152 (2000); Grant v. State, 780 So. 2d 131 (Fla. 4th DCA 2000).

SUMMARY OF THE ARGUMENT

The order denying Petitioner's petition for writ of prohibition does not conflict with any decision of this Court or of another district court of appeal.

ARGUMENT

THE ORDER OF THE FOURTH DISTRICT COURT OF APPEAL NOT DOES NOT CONFLICT WITH ANY DECISION OF THIS COURT OR OF ANOTHER DISTRICT COURT OF APPEAL.

The bulk of Petitioner's jurisdictional brief improperly argues matters beyond the November 28, 2011 order in an attempt to establish conflict. See Reaves v. State, 485 So. 2d 829, 830 (Fla. 1986) ("[c]onflict between decisions must be express and

direct, i.e., it must appear within the four corners of the majority decision"). Respondent will address Petitioner's argument only to the extent that it appears to pertain to the language of the November 28, 2011 order, which was the subject of Petitioner's notice to invoke discretionary jurisdiction.

Petitioner asserts that the order conflicts with Sheppard v. State, 17 So. 3d 275 (Fla. 2009); Johnson v. State, 974 So. 2d 363 (Fla. 2008); Zingale v. Powell, 885 So. 2d 277 (Fla. 2004); Logan v. State, 846 So. 2d 472 (Fla. 2003); Taylor v. Tampa Electric Co., 356 So. 2d 269 (Fla. 1978); Goldsmith v. State, 937 So. 2d 1253 (Fla. 2d DCA 2006); and Jones v. Peninsula Motor Club, Inc., 558 So. 2d 517 (Fla. 1st DCA 1990). However, six of these seven decisions contain absolutely no analysis of an appellate court's discretion to prohibit a defendant from representing himself on appeal. See Sheppard, 17 So. 3d at 276-87 (involving the striking of pro se motions to withdraw pleas by defendants who are represented by lawyers); Johnson, 974 So. 2d at 363-65 (addressing the procedure for striking pro se pleadings of defendant who are represented by lawyers); Zingale, 885 So. 2d at 279-86 (analyzing a statutory limitation on property tax assessments); Taylor, 356 So. 2d at 261-63 (analyzing whether a circuit court clerk may exact a commission on funds disbursed to an eminent domain defendant);

Goldsmith, 937 So. 2d at 1254-57 (discussing the necessary inquiry that trial courts must conduct when a defendant expresses a desire to represent himself); Jones, 558 So. 2d 517-19 (addressing the recurring problem of clerks of circuit courts rejecting notices of appeal filed without a filing fee).

The only conflict case cited by Petitioner that involves an analysis of an appellate court's discretion to prohibit a defendant from representing himself on appeal is Logan v. State, 846 So. 2d 472, 474 (Fla. 2003). Although the Logan decision did not involve a request to discharge counsel, this Court recognized that "[t]he decision to allow a convicted defendant the ability to proceed pro se in appellate proceedings is vested in the sound discretion of the appellate court." Id. at 474. Therefore, this Court's Logan decision is entirely consistent with the order of the Fourth District Court of Appeal.

This Court should be informed of two additional facts related to the instant case. First, in case number SC10-1975, this Court recently declined to review another order from the Fourth District Court of Appeal involving Petitioner that contained language similar to the instant order. Second, on February 27, 2012, the Fourth District Court of Appeal issued an order in case number 4D08-1898 allowing Petitioner to proceed *pro se* on direct appeal.

CONCLUSION

Since there is no conflict, this Court should deny the petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing was sent by U.S. Mail to Anthony W. Ritz, DC # 623173, Wakulla Correctional Institution, 110 Melaleuka Drive, Crawfordville, FL 32327 on March 19, 2012.

MARK J. HAMEL
Counsel for Respondent

CERTIFICATE OF TYPEFACE COMPLIANCE

I HEREBY CERTIFY that this brief has been prepared in Courier New font, 12 point, and double spaced.

MARK J. HAMEL
Counsel for Respondent