

IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. SC12-194  
(4th DCA Case No. 4D010-4080)

**DEL-RIO ALLEN,**

Petitioner,

vs.

**STATE OF FLORIDA,**

Respondent.

RESPONDENT'S BRIEF ON JURISDICTION

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TABLE OF CONTENTS

TABLE OF AUTHORITIES..... iii

PRELIMINARY STATEMENT ..... 1

STATEMENT OF THE CASE AND FACTS ..... 2

SUMMARY OF THE ARGUMENT..... 4

ARGUMENT..... 5

THE DECISION OF THE FOURTH DISTRICT COURT OF  
APPEAL DOES NOT **EXPRESSLY AND DIRECTLY** CONFLICT  
WITH DECISIONS CITED BY PETITIONER.

CONCLUSION.....6

CERTIFICATE OF SERVICE.....7

**TABLE OF AUTHORITIES**

**CASES**

Department of Revenue v. Johnston,  
442 So. 2d 950 (Fla. 1983) .....4

Ford Motor Company v. Kikis, 401 So. 2d 1341 (Fla. 1981) . . . . 5

Greene v. Massey,  
384 So. 2d 24, 27 (Fla. 1980) . . . . . 2

Jackson v. State, 926 So. 2d 1262 (Fla. 2006). . . . . 5

Mancini v. State,  
312 So. 2d 732 (Fla. 1975) .....4

Reaves v. State,  
485 So. 2d 829, 830 n. 3 (Fla. 1986) . . . . . 2

The Florida Bar v. B.J.F.,  
530 So. 2d 286 (Fla. 1988) .....4

**Other Authorities Cited**

Article V, section 3(b)(3) of the Florida Constitution..... 4

**PRELIMINARY STATEMENT**

Petitioner was the Defendant and Respondent was the prosecution in the Criminal Division of the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach, Florida. Petitioner was the Appellant and Respondent was the Appellee in the Fourth District Court of Appeal. In this brief, the parties shall be referred to as they appear before this Honorable Court except that Respondent may also be referred to as the State.

In this brief, the symbol "A" will be used to denote the appendix attached hereto.

All emphasis in this brief is supplied by Respondent unless otherwise indicated.

**STATEMENT OF THE CASE AND FACTS**

Respondent moves to strike Petitioner's Statement of the Case and Facts, or at the very least requests this court to disregard the facts given in Petitioner's statement that are not contained within the opinion. In a jurisdictional brief, the only facts that may be referenced are those referred to in the majority opinion. See Reaves v. State, 485 So. 2d 829, 830 n. 3 (Fla. 1986)(only relevant facts are those contained within the "four corners" of the opinion); Greene v. Massey, 384 So. 2d 24, 27 (Fla. 1980)(majority opinion constituted the only opinion of the court).

The Fourth District *per curiam* affirmed the denial of the motion to correct illegal sentence (A.).

**SUMMARY OF ARGUMENT**

The order of the district court is not in direct and express conflict with the decisions cited by Petitioner. Petitioner has failed to show that this court has jurisdiction to review the opinion of the district court. This court should decline to review this cause on the merits.

## ARGUMENT

THE DECISION OF THE FOURTH DISTRICT COURT OF  
APPEAL DOES NOT **EXPRESSLY AND DIRECTLY** CONFLICT  
WITH DECISIONS CITED BY PETITIONER.

This Honorable Court has authority pursuant to Article V, Section 3(b)(3) of the Florida Constitution (1980) to review a decision of a district court of appeal that **expressly and directly conflicts** with a decision of another district court of appeal or the Supreme Court on the same question of law.<sup>1</sup> See The Florida Bar v. B.J.F., 530 So. 2d 286, 288 (Fla. 1988). This Court in Mancini v. State, 312 So. 2d 732, 733 (Fla. 1975) made it clear that its "jurisdiction to review decisions of courts of appeal because of alleged conflicts is invoked by (1) the announcement of a rule of law to produce a different result in a case which conflicts with a rule previously announced by this court or another district, or (2) the application of a rule of law to produce a different result in a case which involves **substantially the same facts** as a prior case. In this second situation, the facts of the case are of the utmost importance." [emphasis added]. See also Department of Revenue v. Johnston, 442 So. 2d 950 (Fla. 1983) ("cases which are cited for conflict that are distinguishable on their facts will not vest this Court with

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<sup>1</sup> No question of great public importance was certified by the Fourth District.

jurisdiction”).

The State maintains that the opinion of the Fourth District in this case is not in **direct and express conflict** with the decisions cited by Petitioner. The opinion in this case does not set out a basis for conflict because the court per curiam affirmed without a written opinion the denial of the motion to correct illegal sentence. Therefore, the court did not discuss cases, much less legal principles. See Ford Motor Company v. Kikis, 401 So. 2d 1341 (Fla. 1981). An affirmance without any analysis is generally not reviewable. See Jackson v. State, 926 So. 2d 1262 (Fla. 2006).



**CONCLUSION**

WHEREFORE, based on the foregoing arguments and the authorities cited therein, Respondent respectfully requests this Court DENY Petitioner's request for discretionary review over the instant cause.

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" has been furnished to: Del-Rio Allen, DC #W24362, Gulf Correctional Institution/Annex, 699 Ike Steele Road, Wewahitchka, Florida 32465, on February 7, 2012.

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MELYNDA L. MELEAR  
Counsel for Respondent

**CERTIFICATE OF TYPEFACE**

Counsel for the State of Florida hereby certifies, in accordance with Rule 9.210, Florida Rules of Appellate Procedure, that the instant brief has been prepared with 12 point Courier New type.

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MELYNDA L. MELEAR  
Counsel for Respondent