

IN THE SUPREME COURT OF FLORIDA

JAMES NELSON,

Petitioner,

v.

Case No. SC12-200

STATE OF FLORIDA,

Respondent.

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ON DISCRETIONARY REVIEW FROM THE  
THE DISTRICT COURT OF APPEAL,  
FIRST DISTRICT OF FLORIDA

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, James Nelson, the Appellant in the DCA and the defendant in the trial court, will be referenced in this brief as Petitioner or by proper name.

"PJB" will designate Petitioner's Jurisdictional Brief. That symbol is followed by the appropriate page number.

A bold typeface will be used to add emphasis. Italics appeared in original quotations, unless otherwise indicated.

### STATEMENT OF THE CASE AND FACTS

The State rejects Petitioner's statement of the case and facts. The pertinent history and facts are limited to the four corners of the opinion set out in the decision of the lower tribunal. However, no opinion exists for this case, as the Petitioner is appealing an order of the District Court of Appeal dismissing his case.

### SUMMARY OF ARGUMENT

This Court has no jurisdiction. Petitioner is improperly appealing an order dismissing his case. The appropriate focus

would be upon the operative facts, as contained within the "four corners" of a DCA's decision. As there is no decision, there is no express and direct conflict with this Court or another DCA.

Therefore, as there is no expressed and direct conflict, this Court must dismiss this case for lack of jurisdiction.

#### ARGUMENT

##### **WHETHER THE FIRST DISTRICT'S ORDER FALLS WITHIN THE DISCRETIONARY JURISDICTION OF THE FLORIDA SUPREME COURT?**

Petitioner contends that this Court has jurisdiction 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."

Here, Petitioner appeals a denial of his "motion to alter or amend the judgment and motion for declaration of summary judgment" which he filed in response to the First District Court of Appeals dismissing his case for failing to properly file a copy of the order being appealed and failing to pay the filing fee or submit a lower tribunal order of insolvency.

Accordingly, the determination of jurisdiction distills to whether the District Court's order falls within the discretionary jurisdiction of this Court under Florida Rule of

Appellate Procedure 9.030(a)(2)(A). Jurisdiction lies under decisions of a district court of appeal that:

- (i) expressly declare valid a state statute;
- (ii) expressly construe a provision of the state or federal constitution;
- (iii) expressly affect a class of constitutional or state officers;
- (iv) expressly and directly conflict with a decision of another district court of appeal or of the supreme court on the same question of law;
- (v) pass upon a question certified to be of great public importance;
- (vi) are certified to be in direct conflict with decisions of other district courts of appeal.

Here, the district court's order denying Petitioner's motion is not a "decision" that falls within subsection (i) through (vi), as stated above. Therefore, this Court must dismiss this case for lack of jurisdiction.

**CONCLUSION**

Based on the foregoing reason, the State respectfully requests this Honorable Court decline to exercise jurisdiction.

**CERTIFICATE OF SERVICE**

I certify that a copy hereof has been furnished to the following by U.S. MAIL on May 23<sup>rd</sup>, 2012: James Nelson, DC# 307445, Taylor Correctional Institution, 8501 Hampton Springs Road, Perry, Florida 32348.

**CERTIFICATE OF COMPLIANCE**

I certify that this brief was computer generated using Courier New 12 point font.

Respectfully submitted and certified,  
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APPENDIX OF  
JURISDICTIONAL BRIEF OF RESPONDENT

First District Court of Appeals order dated December 27, 2011 denying Appellant's Motion For Reconsideration of the court's dismissal of his case for failure to file initial brief.