

IN THE SUPREME COURT OF FLORIDA

JOSEPH JOHN FRANTZIS,  
Petitioner,

v.

CASE NO. SC12-0443

STATE OF FLORIDA,  
Respondent.

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On Discretionary Review from the First  
District Court of Appeal: NON-Certified Conflict

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JURISDICTIONAL BRIEF OF RESPONDENT

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**THE DECISION BELOW DOES NOT EXPRESSLY AND DIRECTLY  
CONFLICT WITH GOODE v. STATE, 830 So.2d 817  
(FLA.2002).**

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**STATEMENT OF THE CASE AND FACTS**

The decision below was issued March 2, 2012. It affirmed the order committing Frantzis under the Ryce Act (§394.910-.932, Fla.Stat.). Frantzis v. State, 2012 WL 676319 (Fla.1st DCA 2012). He prematurely filed notice to invoke this court's discretionary jurisdiction March 7, 2012.

The only facts in the opinion below<sup>0</sup> are: Frantzis appealed from the final order civilly committing him under the Ryce Act. He was not brought to trial within 150 days of the probable cause determination. He twice filed a waiver of the right to trial within 30 days, and "much of the delay in the proceedings was attributable to him." *Id.* at 1.

#### **SUMMARY OF ARGUMENT**

The decision below correctly analogizes to Goode v. State, 830 So.2d 817 (Fla.2002), to conclude the 120-day limit on continuances in §394.916(2), Fla.Stat., is not jurisdictional. There is no express and direct conflict with Goode. This court lacks conflict jurisdiction and should dismiss the petition.

As noted in the decision below, Frantzis twice waived his right to trial within 30 days. He was responsible for much of the delay. He cannot obtain relief based on such delay. If this court has jurisdiction, review should be declined.

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<sup>0</sup> <sup>1</sup>The State objects to Frantzis' statement, because it includes facts not appearing in the decision below.

## **ARGUMENT**

**THE DECISION BELOW DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH GOODE v. STATE, 830 So.2d 817 (FLA.2002). (*Restated*).**

### **A. Standard of Review**

The jurisdictional question of is one of law--whether the decision below, which interpreted §394.916(2), Fla. Stat., conflicts with Goode. It is answered *de novo*. Cf. Florida Birth-Related NIC Ass'n v. Fla. DOAH, 948 So.2d 705, 709-10 (Fla. 2007) ("Because resolving this conflict requires the interpretation of a statute, our standard of review is *de novo*.").

### **B. Merits**

Frantzis contends this Court has jurisdiction through express and direct conflict with Goode. See Art.V, §3(b)(3), Fla.Const. ("[The supreme court] [m]ay review any decision of a district court of appeal...that expressly and directly conflicts with a decision of...the supreme court on the same question of law."). He is wrong.

Conflict between decisions "must be express and direct," and "must appear within the four corners of the majority decision." Reaves v. State, 485 So.2d 829,830 (Fla.1986). Accord Dept. of HRS v. NACS, Inc., 498 So.2d 888, 889 (Fla. 1986) (rejecting "inherent" or "implied" conflict). The record cannot be used to establish jurisdiction. Reaves. Jurisdiction is established by "conflict of decisions, not conflict of opinions or reasons that supplies jurisdiction for review by certiorari." Jenkins v. State, 385 So.2d

1356, 1359 (Fla. 1980).

To allege conflict, Frantzis claims the decision below erroneously extended Goode. However, no facts in the decision establish such error. Instead, it analogizes to Goode to conclude the 120-day limit on continuances in §394.916(2), Fla.Stat.,<sup>0</sup> is not a jurisdictional deadline.

The flaw in Frantzis' argument is that he perceives--based on a 1994 law review article (as updated)<sup>3</sup>--there is a separate type of conflict jurisdiction based on "misapplication" or "erroneous extension" of this court's precedent. The Florida Constitution does not say as much, but limits conflict jurisdiction to the "express and direct" language quoted in Respondent's opening paragraph.

Nothing in the Anstead/Kogan article dispenses with the requisite that conflict arise only within the four corners of the opinion below. As the article explains:

The discretion to review such cases really may be

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<sup>0</sup> §394.916(2) provides: "The trial may be continued once upon the request of either party for not more than 120 days upon a showing of good cause, or by the court on its own motion in the interests of justice, when the person will not be substantially prejudiced. No additional continuances may be granted unless the court finds that a manifest injustice would otherwise occur."

<sup>3</sup>See Anstead, Kogan et al., The Operation and Jurisdiction of the Supreme Court of Florida, 18 NOVA L. REV. 1151 (1994) at page 87-88 [hereinafter Anstead/Kogan]. The article appears last updated about 2005; last printed in 2007; and found at: [http://www.floridasupremecourt.org/pub\\_info/documents/juris.pdf](http://www.floridasupremecourt.org/pub_info/documents/juris.pdf)

justifiable where the factual error is apparent within the four corners of the opinion being re-viewed. In *State v. Stacey*, for example, the district court opinion did in fact "overlook" the relevant finding. However, at best, the possibility of the error could be inferred from the district court opinion, but the facts stated therein were not complete enough to make the error apparent. "Inferential" factual error is a very slim reed to support a finding of express and direct conflict, and the justification for review becomes questionable if the existence of the error cannot be inferred from material contained within the four corners of the district court opinion. Thus, the Court may have overlooked the four-corners rule in accepting jurisdiction, and the case is probably best understood as marginal for purposes of precedent.

*Id.* at p.88 [footnotes omitted; emphasis supplied].

Frantzis' argument is circular. He argues the merits, to contend the opinion below is wrong; and because it is wrong, in his view, it "misapplies" Goode. His perceived conflict of is but personal disagreement with the First DCA's analogy to Goode.

Section 394.916(2), Fla.Stat., authorizes continuances exceeding the 120-day limit to prevent "manifest injustice." The 120-day limit cannot simultaneously be exceeded, yet establish a bar to subject matter jurisdiction. At most, an unjustified continuance beyond 120 days might defeat the trial court's personal jurisdiction over a particular defendant; unless, as here, the defendant is responsible for the excess continuation.

When a continuance exceeds 120 days in a case, the court's power to hear other Ryce Act cases is not affected. There is no loss of subject matter jurisdiction. See Carbajal v. State, 75 So.3d 258, 262 (Fla.2011) ("Subject matter jurisdiction is the power of a particular

court to hear the type of case that is then before it or jurisdiction over the nature of the cause of action and relief sought." [internal italics, quotes omitted]). Necessarily, the 120-day limit does not go to subject matter jurisdiction.

There is no express and direct conflict with Goode, particularly in light of Carbajal. This case should be dismissed for lack of jurisdiction. As found below, Frantzis twice waived his right to trial within 30 days, and was responsible for much of the delay. The 120-day limit was properly exceeded. He cannot obtain relief based on delay he caused. If this court has jurisdiction, reviewed should be declined.

#### **CONCLUSION**

This court lacks subject matter jurisdiction. Frantzis' petition for review must be dismissed. Alternatively, under the very limited facts in the decision below, review must be declined; as Frantzis cannot benefit from delay he caused.

Respectfully submitted,

**PAMELA JO BONDI**  
**ATTORNEY GENERAL**

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**CERTIFICATE OF SERVICE AND COMPLIANCE WITH RULE 9.210**

I certify a copy of this JURISDICTIONAL BRIEF has been sent, as agreed, by email to Frantzis' attorney: **RICHARD M. SUMMA**, Assistant Public Defender, at: [richardsumma@flpd2.com](mailto:richardsumma@flpd2.com); on March \_\_\_\_, 2012. I also certify this brief complies with Fla.R.App.P. 9.210.

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**CHARLIE MCCOY**

Senior Assistant Attorney General



**IN THE SUPREME COURT OF FLORIDA**

JOSEPH JOHN FRANTZIS,

V.

CASE SC12-443

STATE OF FLORIDA.

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**APPENDIX**

(DECISION UNDER REVIEW)

IN THE FIRST DISTRICT COURT OF APPEAL  
FIRST DISTRICT OF FLORIDA

JOSEPH FRANTZIS,  
Appellant,

v.

CASE NO. 1D11-2034

STATE OF FLORIDA,  
Appellee.

\_\_\_\_\_ /

Opinion filed March 02, 2012.

An appeal from the Circuit Court for Duval County. James L. Harrison, Judge.

Nancy A. Daniels, Public Defender, and Richard M. Summa, Assistant Public Defender, Tallahassee, for Appellant.

Pamela Jo Bondi, Attorney General, and Charlie McCoy, Senior Assistant Attorney General, Tallahassee, for Appellee.

(WOLF, J.)

Appellant challenges a final order of civil commitment under the Jimmy Ryce Act, sections 394.910-932, Florida Statutes (2007). Section 394.916(1) provides the court shall conduct a trial within 30 days after the determination of probable cause. Section 394.916(2) states the court may grant one continuance for "not more than 120 days." Appellant argues the limit on continuances in subsection (2) is jurisdictional. He asserts that because he was not brought to trial within 150 days of the probable cause determination, the trial court lost subject matter jurisdiction over the proceedings. Therefore, he argues, he is entitled to a dismissal of the civil commitment action with prejudice.

In State v. Goode, 830 So. 2d 817 (Fla. 2002), the supreme court found the 30 day provision in subsection (1) was not jurisdictional. We find no reason to treat the 120 day provision in subsection (2) differently. Moreover, below appellant twice filed a waiver of his right to trial within 30 days of the probable cause determination, and much of the delay in the proceedings was attributable to him. We, therefore, find no merit in appellant's contentions.

We also determine the other issues he raised are without merit. Therefore, we affirm.

AFFIRMED.

(PADOVANO and MARSTILLER, JJ., CONCUR.)