

IN THE SUPREME COURT OF FLORIDA

LAJEFFRIC OWENS,

Petitioner,

v.

CASE NO. SC12-450

STATE OF FLORIDA,

First DCA No. 1D11-894

Respondent.

ON DISCRETIONARY REVIEW
FROM THE FIRST DISTRICT COURT OF APPEAL

**INITIAL BRIEF OF PETITIONER
ON JURISDICTION**

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STATEMENT OF THE CASE AND FACTS

In a resentencing hearing compelled by Graham v. Florida, 130 S.Ct. 2011 (2010), the trial court sentenced Owens to 40 years in prison for offenses committed when he was 16 years of age. First in a motion to correct sentencing error and again on direct appeal, he argued (1) the findings necessary to trigger his adult prosecution and resulting 40-year sentence were not made by a jury, violating the Sixth Amendment right to jury trial, and (2) resentencing counsel provided ineffective assistance on the face of the record. The First District Court of Appeal affirmed, per curiam, with a citation to Kirkland v. State, 67 So. 3d 1147 (Fla. 1st DCA 2011). In Kirkland, the First DCA issued an opinion rejecting the same Sixth Amendment argument in a case involving the state's exercise of discretion to prosecute a juvenile as an adult. Kirkland is now before this Court on both the defendant's petition raising the Sixth Amendment issue and the state's petition concerning the reversal of one of Kirkland's convictions arising from error in the instruction on the lesser included offense of attempted manslaughter. SC11-1688, SC11-1690.

Owens filed timely notice invoking this Court's conflict jurisdiction. This brief follows.

SUMMARY OF THE ARGUMENT

The First DCA cited Kirkland v. State, 67 So. 3d 1147 (Fla. 1st DCA 2011), in rejecting Owens' challenge to the constitutionality of his 40-year sentence for crimes punishable by sanctions extending only to his 21st birthday had he been prosecuted as a juvenile. Kirkland is now pending in this Court on a defense petition to exercise discretionary jurisdiction on this issue. This Court has discretionary conflict jurisdiction to review the decision because the district court cited a case pending review in this Court. See Jollie v. State, 405 So. 2d 418, 420 (Fla. 1981).

ARGUMENT

THIS COURT SHOULD EXERCISE “JOLLIE” REVIEW JURISDICTION TO MAINTAIN UNIFORMITY OF DECISIONS ON THE ISSUE IN STATE V. KIRKLAND.

State v. Kirkland, Nos. SC11-1688 and SC11-1690, was pending a decision whether to exercise discretionary review by this Court on the date this brief was filed. Kirkland seeks review of a First DCA decision rejecting his Sixth Amendment challenge to a 40-year sentence imposed on him for a crime committed when he was 15 years old. He seeks discretionary review on two grounds: the district court (1) expressly declared valid section 95.557(1)(a), Florida Statutes, which gives the state discretion to charge 15-year-old defendants as adults under specified circumstances, and (2) expressly construed the provision guaranteeing criminal defendants the right to by jury in the Sixth Amendment to the United States Constitution.

The citation to Kirkland creates discretionary jurisdiction in this Court under Article V, Section 3(b)(3) of the Florida Constitution to review the First DCA decision as one which expressly and directly conflicts with a decision of this Court. See Jollie v. State, 405 So.2d 418, 420 (Fla. 1981) (concluding that “a district court of appeal per curiam opinion which cites as controlling authority a decision that is either pending review in or has been reversed by this Court continues to constitute prima facie express conflict and allows this Court to exercise its jurisdiction”).

If it grants discretionary review in Kirkland, the Court should exercise discretionary conflict jurisdiction to provide for uniform treatment of Owens, who is similarly situated.

CONCLUSION

Based on the arguments contained herein and the authorities cited in support thereof, the petitioner requests that this Honorable Court grant discretionary review.

CERTIFICATES OF SERVICE AND FONT SIZE

I hereby certify that a copy of the foregoing has been furnished by U.S. Mail to Therese A. Savona, Office of the Attorney General, the Capitol, PL-01, Tallahassee, FL 32399-1050, this 15th day of March, 2012. I hereby certify that this brief has been prepared using Times New Roman 14 point font.

Respectfully submitted,

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