

IN THE SUPREME COURT OF FLORIDA

SANTERIS T. MCKINNEY,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

CASE NO. SC12-463

First DCA No. 1D11-3782

JURISDICTIONAL BRIEF OF PETITIONER

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PUBLIC DEFENDER
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TABLE OF CONTENTS

	<u>PAGE(S)</u>
TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
I. PRELIMINARY STATEMENT	1
II. STATEMENT OF THE CASE AND FACTS	2
III. SUMMARY OF ARGUMENT	4
IV. ARGUMENT	5
ISSUE I: PETITIONER HAS PROPERLY INVOKED THE JURISDICTION OF THIS COURT SINCE THE FIRST DISTRICT COURT OF APPEAL RENDERED A DECISION WHICH EXPRESSLY AND DIRECTLY WITH A DECISION FROM THIS COURT.	5
V. CONCLUSION	8
CERTIFICATE OF SERVICE	9
CERTIFICATE OF FONT AND TYPE SIZE	9

TABLE OF AUTHORITIES

CASES

PAGE(S)

<i>Houser v. State</i> , 474 So. 2d 1193 (Fla. 1985)	4-7
<i>McKay v. State</i> , 925 So. 2d 1135 (Fla. 2d DCA 2006)	4-7
<i>Peterson v. State</i> , 115 So. 2d 376 (Fla. 4 th DCA 2001)	5
<i>Rodriguez v. State</i> , 875 So. 2d 642 (Fla. 2d DCA 2004)	4-7

RULES

Rule 9.030(a) (2) (A) (iv) , Florida Rule of Appellate Procedure	4,
	5

CONSTITUTIONS

Fla. Const., Art. V, Sec. 3(b)(3)	5
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STATE OF FLORIDA,

Respondent. :

_____/

JURISDICTIONAL BRIEF OF PETITIONER

I. PRELIMINARY STATEMENT

Petitioner was the Appellant and the Respondent was the Appellee in the proceedings in the First District of Appeal. The parties will be referred to as they appear before this Court.

II. STATEMENT OF THE CASE AND FACTS

On February 2, 2009, the State Attorney for the Fourth Judicial Circuit in and for Duval County charged Appellant, SANTERIS MCKINNEY, with vehicular homicide, murder in the third degree, aggravated fleeing or attempting to elude causing death or serious bodily injury, and carjacking. Mr. McKinney received a jury trial on September 28 and 29, 2009 with the Honorable Michael Weatherby, Circuit Judge, presiding. Mr. McKinney was found guilty as charged.

Mr. McKinney argued at sentencing that he could not be convicted of vehicular homicide, aggravated fleeing to elude causing death, and third degree murder since all three offenses arise from the death of one victim; he argued he could only be convicted of one of the three offenses. The trial court expressed concern of sentencing Mr. McKinney on third degree murder and aggravated fleeing to elude causing death. However, the trial court set aside and revoked the adjudication for vehicular homicide. Mr. McKinney was sentenced as a habitual felony offender to 30 years in prison for third degree murder, to a concurrent term of 30 years in prison for aggravated fleeing and attempting to elude causing death, and to a consecutive term of twenty years in prison for carjacking as a habitual felony offender. Mr. McKinney timely filed a notice of appeal.

On appeal, Mr. McKinney argued that his convictions for third degree murder and aggravated fleeing to elude causing death for a single death violated his right against double jeopardy citing to this Court's opinion in *Houser v. State*, 474 So. 2d 1193 (Fla. 1983) . On January 24, 2011, the First District Court of Appeal issued an opinion holding that Mr. McKinney's convictions did not violate double jeopardy. (Al-8). The First District Court filed the mandate on February 9, 2011. Petitioner filed a Notice To Invoke this Court's jurisdiction on February 28, 2011.

III. SUMMARY OF ARGUMENT

This decision of the First District Court of Appeal affirms Petitioner's convictions of aggravated fleeing to elude causing death and third degree murder for a single death, finding that there is no violation of double jeopardy since aggravated fleeing to elude causing death is not a homicidal offense. Thus, the decision is in direct conflict with this Court's decision in *Houser v. State*, 474 So. 2d 1193 (Fla. 1985) as well as other decisions from the Second District Court of Appeal in *McKay v. State*, 925 So. 2d 1135 (Fla. 2d DCA 2006) and *Rodriguez v. State*, 875 So. 2d 642 (Fla. 2d DCA 2004). Since the decision in Petitioner's case expressly and directly conflicts with a decision from this Court as well as another district court of appeal, this Court has the same discretionary jurisdiction to review the decision as if the District Court had certify the question pursuant to Florida Rule of Appellate Procedure 9.030(a)(2)(A)(iv).

IV. ARGUMENT

ISSUE I

PETITIONER HAS PROPERLY INVOKED THE JURISDICTION OF THIS COURT SINCE THE FIRST DISTRICT COURT OF APPEAL RENDERED A DECISION WHICH EXPRESSLY AND DIRECTLY WITH A DECISION FROM THIS COURT.

Where a district court of appeal renders a decision which expressly and directly conflicts with a decision of this Court or another district court, this Court has the same discretionary jurisdiction to review the decision as it would have had if the district court had certified a question. *Peterson v. State*, 775 So. 2d 376 (Fla. 4th DCA 2001); Art. V, Section 3(b)(3), Fla. Constitution; Florida Rule of Appellate Procedure 9.030(a)(2)(A)(iv) (2011).

In the present case, the First District Court of Appeal held that double jeopardy did not bar Petitioner's convictions for both felony murder and aggravated fleeing to elude causing death for the death of a single victim. Petitioner asserts this holding is in direct conflict with *Houser v. State*, 474 So. 2d 1193 (Fla. 1985), *McKay v. State*, 925 So. 2d 1133 (Fla. 2d DCA 2006), and *Rodriguez v. State*, 875 So. 2d 642 (Fla. 2d DCA 2004). In *Houser*, this Court discussed whether DUI manslaughter was simply an enhancement of the penalty for driving while intoxicated, and thus a crime distinct from vehicular manslaughter. The Court concluded that DUI manslaughter was not

merely an enhancement for the penalty of driving while intoxicated because the additional element of the death of a victim raised DUI manslaughter "beyond the scope of mere enhancement and place [d] it squarely within the scope of this state's regulation of homicide." *Houser*, 474 So. 2d at 1196. Petitioner thus argued in light of *Houser*, aggravated fleeing to elude causing death is not merely an enhancement of the penalty for aggravated fleeing to elude. The additional element of a death of a victim places it squarely within the scope of a homicide conviction.

However, the First District distinguished *Houser* from the instant case based upon the fact that the defendants in *Houser*, *McKay*, and *Rodriguez* were convicted of vehicular homicide and DUI manslaughter. The First District wrote, "[u]nlike DUI manslaughter and vehicular homicide, fleeing to elude can be committed without causing a death. Thus, fleeing to elude is not a homicide offense... The fact that Appellant's conviction for fleeing or eluding was based upon a death, rather than serious bodily injury, is irrelevant to the double jeopardy analysis." (*Page 7 of attached opinion*). Such analysis is a misapplication of *Houser*. Petitioner was charged and convicted of aggravated fleeing to elude causing death, not aggravated fleeing or eluding causing serious bodily injury. Therefore, Petitioner's conviction of aggravated fleeing to elude causing death was a

"homicide offense." Therefore, the attached opinion expressly and directly conflicts with *Houser*, *McKay*, and *Rodriquez* by holding that aggravated fleeing to elude causing death is not a homicide offense and thus, a person can be convicted of aggravated fleeing to elude causing death and felony murder for a single death without violating double jeopardy.

This Court should accept this case to resolve this conflict which now exists because of the decision in Petitioner's case on such a fundamental issue of whether a defendant can be punished twice for a single homicide based upon a simple variance in wording of a title of an offense. Therefore, Petitioner has properly invoked the jurisdiction of this Court.

Petitioner respectfully requests this Honorable Court to grant his petition for review.

V. CONCLUSION

The decision of the First District Court of Appeal herein found that double jeopardy did not bar Petitioner's convictions for both felony murder and aggravated fleeing to elude causing death for the death of a single victim. By doing so, the decision expressly and directly conflicts with the decisions of this Court and other district courts. This Honorable Court should grant Petitioner's request for jurisdiction and hear this cause on the merits.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail to Joshua Heller, Assistant Attorney General, The Capitol, PL-01, Tallahassee, FL 32399-1050, and by U.S. Mail to Appellant, Mr. Santeris McKinney, DOC# J19745, Taylor Correctional Institution - Annex, 8501 Hampton Springs Rd., Perry, FL 32348-8747, on this (jJjTj^day of March, 2012.

CERTIFICATE OF FONT AND TYPE SIZE

I hereby certify that this brief was typed using Courier New, 12 point.

Respectfully submitted,

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IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

ALLEN BENNETT,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

CASE NO. 1D11-3782

_____/

Opinion filed March 5, 2012.

An appeal from the Circuit Court for Bay County.
James B. Fensom, Judge.

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

Pamela Jo Bondi, Attorney General, and Giselle Denise Lylen, Assistant Attorney
General, Tallahassee, for Appellee.

PER CURIAM.

AFFIRMED. See Flagg v. State. 74 So. 3d 138 (Fla. 1st DCA 2011).

BENTON, C.J., WOLF, and VAN NORTWICK, JJ., CONCUR.