

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,

Petitioner,

v.

CASE NO. SC12-576

LOWER TRIBUNAL CASE NO. 5D11-2681

CHARLES M. MENDENHALL,

Respondent.

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ON NOTICE TO INVOKE DISCRETIONARY REVIEW
OF A DECISION OF THE FIFTH DISTRICT COURT OF APPEAL

PETITIONER'S BRIEF ON JURISDICTION

PAMELA JO BONDI
ATTORNEY GENERAL

WESLEY HEIDT
ASSISTANT ATTORNEY GENERAL
Fla. Bar # 773026

KRISTEN L. DAVENPORT
ASSISTANT ATTORNEY GENERAL
Fla. Bar #0909130
444 Seabreeze Blvd.
5th Floor
Daytona Beach, FL 32118
(386) 238-4990

COUNSEL FOR PETITIONER

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OTHER AUTHORITIES CITED

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STATEMENT OF THE CASE AND FACTS

In 2007, Mendenhall was tried for attempted first-degree murder, and the jury received instructions on attempted first-degree murder, attempted second-degree murder, and attempted voluntary manslaughter. *Mendenhall v. State*, 37 Fla. L. Wkly. D607 (Fla. 5th DCA March 9, 2012). The trial court read the standard jury instruction on attempted manslaughter, and Mendenhall was ultimately convicted of attempted second degree murder. *Id.*

Mendenhall subsequently brought the instant petition for writ of habeas corpus, alleging that appellate counsel was ineffective for failing to challenge the standard instruction. The district court granted the petition, certifying that its decision conflicted with the decision of the Fourth District Court of Appeal in *Williams v. State*, 40 So.3d 72 (Fla. 4th DCA 2010), *rev. granted*, 64 So. 3d 1262 (Fla. 2011).

The State timely filed its notice to invoke the discretionary jurisdiction of this Court.

SUMMARY OF ARGUMENT

The Fifth District Court of Appeal has certified that its decision in the above-styled case is in direct conflict with that of the Fourth District Court of Appeal in *Williams v. State*, a case that is presently under review by this Court (Case No. SC10-1458). This Court should exercise its discretionary jurisdiction over this decision under Article V, Section 3(b)(3) of the Florida Constitution.

ARGUMENT

THE FIFTH DISTRICT COURT OF APPEAL HAS CERTIFIED THAT ITS DECISION IS IN DIRECT CONFLICT WITH A DECISION OF THE FOURTH DISTRICT COURT OF APPEAL.

Under Article V, Section 3 (b)(3) of the Florida Constitution, this Court may review any decision of a district court of appeal that is certified to be in direct conflict with a decision of another district court of appeal on the same question of law.

The Fifth District Court of Appeal has certified that its decision in the above-styled case is in direct conflict with that of the Fourth District Court of Appeal in *Williams v. State*, a case that is presently under review by this Court (Case No. SC10-1458). This Court should exercise its discretionary jurisdiction over the instant decision.

CONCLUSION

Since the Fifth District Court of Appeal has certified that its decision is in direct conflict with a decision of the Fourth District Court of Appeal, this Court should exercise its discretionary jurisdiction in this case.

Respectfully submitted,

PAMELA JO BONDI
ATTORNEY GENERAL

WESLEY HEIDT
ASSISTANT ATTORNEY GENERAL
Fla. Bar # 773026

KRISTEN L. DAVENPORT
ASSISTANT ATTORNEY GENERAL
Fla. Bar #0909130
444 Seabreeze Blvd.
5th Floor
Daytona Beach, FL 32118
(386) 238-4990

COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above Petitioner's Brief on Jurisdiction has been furnished by U.S. mail to Jack R. Maro, counsel for Respondent, P.O. Box 3868, Ocala, Florida 34478, this 2nd day of April, 2012.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 12-point Courier New, in compliance with Fla. R. App. P. 9.210(a)(2).

Kristen L. Davenport
Assistant Attorney General