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IN THE SUPREME COURT OF FLORIDA

KENNETH PATTERSON,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Case No. SC13-1309
4th DCA Case No. 4D12-2296

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RESPONDENT'S BRIEF ON JURISDICTION

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STATEMENT OF THE CASE AND FACTS

Petitioner seeks review of the decision issued by the Fourth District Court of Appeal on April 3, 2013. The decision states the following:

> Kenneth Patterson (Defendant) appeals an order denying his motion to correct illegal sentence, filed pursuant to rule 3.800(a), Florida Rules of Criminal Procedure. We affirm, but remand for the circuit court to correct a scrivener's error.
>
> In 1998, following a jury trial, defendant was convicted of robbery with a firearm. He was sentenced to life in prison both as a habitual violent felony offender (HVFO) **and** as a prison release reoffender (PRR).
>
> Thereafter, on appeal from the trial court's denial of defendant's rule 3.850 motion, this court remanded for resentencing only as a PRR, consistent with Grant v. State, 770 So. 2d 655 (Fla. 2000). Patterson v. State, 860 So. 2d 528 (Fla. 4th DCA 2003). In March 2004, the trial court deleted the HVFO designation. No appeal was taken from that order.
>
> In the instant rule 3.800(a) motion filed in 2012, defendant now challenges his life sentence, claiming the trial court in 2004 failed to orally pronounce any enhancement penalty. The written sentence was consistent. Among the documents which defendant attached to his motion were: a copy of the March 3, 2004 order deleting the habitual offender designation from the sentence; a new sentencing order dated March 3, 2004, containing a note at the top reading "* Habitual Offender Deleted *," **but leaving the box next to "PRISON RELEASEE REOFFENDER" unchecked**; and, a court

disposition order dated March 3, 2004, providing only "life sentence to remain only delete the habitual offender." Defendant argued that because his sentencing guidelines scoresheet generated a maximum sentence of less than ten years, and the trial court did not orally pronounce the PRR designation, a life sentence could not legally be imposed. Defendant noted in his motion that the sentencing error in his case was clear on the face of the record—he now was sentenced to life, but without any enhancement, which was an illegal sentence. He requested resentencing pursuant to the applicable guidelines. Defendant cited cases such as Akins v. State, 98 So. 3d 60 (Fla. 2d DCA 2009) (reversing summary denial of 3.800(a) motion and holding that trial court, which imposed sentence on revocation of probation without mentioning defendant's habitual felony offender status, then later modified sentence to clarify it was imposed as HFO sentence, violated double jeopardy), approved, 69 So. 3d 261 (Fla. 2011), and cases cited therein.

The trial court summarily denied the motion, explaining that deleting the habitual offender designation, rather than conducting a new sentencing hearing, was not illegal, and that the motion was frivolous.

This appeal followed. In his initial brief, defendant states that he was transported back to the Broward County Jail but a new sentencing hearing was not held; instead, the trial court merely stated that the HVFO designation was deleted. It did not re-pronounce the PRR life sentence but entered a written order reflecting a life term without any enhancing designation. This court had remanded for resentencing, but resentencing did not take place. The unenhanced life term, not as a PRR, exceeds the guidelines maximum sentence, which is

> less than ten years.
>
> We distinguish this case from those defendant cited in that in those cases, the various sentencing courts had discretion to impose a sentence without habitualization, but the trial court in this case had no discretion to sentence defendant without PRR status; defendant already had been sentenced as a PRR, and this court's decision requiring resentencing did not authorize the trial court to do anything other than to maintain that sentence, eliminating only the habitual sentence. Defendant's allegation that no resentencing hearing was held only supports the conclusion that all the trial court did was delete the HVFO sentence.
>
> Thus, we affirm, but direct the trial court on remand to correct the scrivener's error in omitting to check the PRR box on the sentencing order.
>
> Affirmed but Remanded.

Patterson v. State, 114 So. 3d 264 (Fla. 4th DCA 2013).

SUMMARY OF THE ARGUMENT

There is no conflict jurisdiction because the decision of the Fourth District Court of Appeal does not conflict in any way with the two decisions of this Court cited by Petitioner.

ARGUMENT

THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL NOT DOES NOT CONFLICT WITH ANY DECISION OF THIS COURT.

Petitioner contends that the decision of the Fourth District Court of Appeal conflicts with Ashley v. State, 850 So. 2d 1265 (Fla. 2003) and Smith v. Smith, 118 So. 2d 204 (Fla. 1960). However, there is no conflict because the decisions from this Court are completely different and do not address the same issue addressed by the Fourth District Court of Appeal.

In Ashley this Court examined "whether a trial court can bring a defendant back to court, vacate the sentence imposed, and resentence him to what amounts to a more onerous sentence after he has begun serving the original sentence, without violating the double jeopardy clause." Ashley, 850 So. 2d at 1266. In one of the conflict cases examined in Ashley, the trial judge inadvertently orally sentenced the defendant as a habitual felony offender, instead of as habitual violent felony offender. Id. at 1266. In the other conflict case, the trial judge inadvertently failed to orally sentence a defendant as a habitual felony offender. Id. at 1267. This Court concluded that the oral pronouncement of sentencing controls when the trial court erroneously fails to announce a defendant's habitual sentencing status. Id. at 1268.

Petitioner contends that there is conflict with Ashley because Ashley held "that the oral pronouncement controls over a subsequent written order." Petitioner appears to contend that conflict exists because the trial court in his case "did not re-pronounce the PRR life sentence but entered a written order reflecting a life term without any enhancing designation." However, there is no conflict because Ashley did not address the necessity to re-pronounce part of a sentence that was properly imposed and affirmed on appeal.

In Smith this Court considered whether a trial court's order in a "chancery cause" complied with this Court's mandate previously entered in the same case. Smith, 118 So. 2d at 205. In the previous decision, this Court reversed the final decree and "remanded 'the cause for further proceedings consistent with this opinion so that the appellee may, if she is able to do so tender any further evidence in support of her contentions that a constructive trust should be decreed.'" Id. After the case was remanded, one of the parties sought a judgment on the pleadings when no additional testimony was offered within the 60-day period allowed by a rule of civil procedure. Id. The Chancellor entered an order denying the motion for a judgment on the pleadings. Id. This Court concluded that the rule did not apply, affirmed the Chancellor's order, and explained that "the

trial judge, upon the filing of our mandate, has the authority to take such further proceedings in the case as may be appropriate in order to arrive at another decree which will accord with the mandate of this Court." Id. at 205-06 (citations omitted).

Petitioner contends that there is conflict with Smith because Smith "held that 'reversal' has the legal effect of vacating and nullifying." This particular language is not found in the Smith opinion. See Smith, 118 So. 2d at 204-06. However, essentially the same premise is stated with other language: "In Stossell v. Gulf Life Ins. Co., 123 Fla. 227, 166 So. 2d 821, we held that when we reversed and remanded a cause for further consideration by a lower court such cause is returned to the trial court in the same status as if the order or decree which is reversed had never been made." Smith, 118 So. 2d at 206. In any event, there is no conflict. In 2000, the Fourth District Court of Appeal remanded Petitioner's case "for resentencing only as a PRR." Patterson, 114 So. 3d at 265. This was not a complete reversal, but a reversal of only part of Petitioner's sentence. Thereafter, the Fourth District Court of Appeal was satisfied with the action taken by the trial court pursuant to the mandate, which is consistent with the rule from Smith that "the trial judge, upon the filing of our mandate, has

authority to take such further proceedings in the cause as may be appropriate in order to arrive at another decree which will accord with the mandate of this Court." Smith, 118 So. 2d at 205. Thus, the decision below is entirely consistent with Smith.

CONCLUSION

Since there is no conflict, this Court should deny the petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing was sent by U.S. mail to Kenneth Patterson, DC # 450653, Everglades Correctional Institution, 1599 S.W. 187th Avenue, Miami, FL 33194 on July 26, 2013.

_____
/s/ MARK J. HAMEL
Counsel for Respondent

CERTIFICATE OF TYPEFACE COMPLIANCE

I HEREBY CERTIFY that this brief has been prepared in Courier New font, 12 point, and double spaced.

_____
/s/ MARK J. HAMEL
Counsel for Respondent