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IN THE SUPREME COURT OF FLORIDA

ARRINGTON R. WELLS,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Case No. SC13-1346

JURISDICTIONAL BRIEF OF RESPONDENT

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PRELIMINARY STATEMENT

Respondent, the State of Florida, the Appellee in the District Court of Appeal ("DCA") and the prosecuting authority in the trial court, will be referenced in this brief as Respondent, the prosecution, or the State. Petitioner, Arrington R. Wells, the Appellant in the DCA and the defendant in the trial court, will be referenced in this brief as Petitioner or by proper name.

"PJB" will designate Petitioner's Jurisdictional Brief and will be followed by any appropriate page number. "A" will designate the Appendix to Petitioner's Jurisdictional Brief and will be followed by any appropriate page number.

A bold typeface will be used to add emphasis. Italics appeared in original quotations, unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

The First District Court of Appeal dismissed Petitioner's appeal by issuing an order with the following language: "PER CURIAM. DISMISSED. *See Baker v. State*, 878 So. 2d 1236 (Fla. 2004); *see also Pettway v. State*, 776 So. 2d 930 (Fla. 2000)." Wells v. State, No. 1D13-1681, 114 So. 3d 1037 (Fla. 1st DCA May 9, 2013), *reh'g denied* June 13, 2013.

SUMMARY OF ARGUMENT

In the case at hand, there can be no express and direct conflict conferring jurisdiction to this Court for review because the decision of the First District Court of Appeal did not contain an accompanying opinion

but merely cited two Florida Supreme Court cases which are still good law. Therefore, Honorable Court should determine that it does not have jurisdiction in this cause.

ARGUMENT

ISSUE: WHETHER THIS COURT HAS JURISDICTION TO REVIEW PETITIONER'S CASE AS BEING AN EXPRESS AND DIRECT CONFLICT WITH OTHER DECISIONS FROM THE FOURTH DISTRICT COURT OF APPEAL? (RESTATED)

1. Jurisdictional Criteria

Petitioner contends that this Court has jurisdiction pursuant to Fla. R. App. P. 9.030(a)(2)(A)(iv), which parallels Article V, § 3(b)(3), Fla. Const. The Florida Constitution provides: "The supreme court . . . [m]ay review any decision of a district court of appeal . . . that expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law." Art. V, § 3(b)(3), Fla. Const.

"Conflict between decisions must be express and direct, i.e., it must appear within the four corners of the majority decision." Reaves v. State, 485 So. 2d 829, 830 (Fla. 1986). *Accord* Dep't of Health & Rehabilitative Services v. Nat'l Adoption Counseling Serv., Inc., 498 So. 2d 888, 889 (Fla. 1986) ("inherent or so called 'implied' conflict may no longer serve as a basis for this Court's jurisdiction."). Neither the record, nor a

concurring opinion, nor a dissenting opinion can be used to establish jurisdiction. Reaves, 485 So. 2d at 830; Jenkins v. State, 385 So. 2d 1356, 1359 (Fla. 1980). In addition, it is the "conflict of decisions, not conflict of opinions or reasons that supplies jurisdiction for review by certiorari." Jenkins, 385 So. 2d at 1359 (citation omitted).

Express and direct conflict jurisdiction cannot be sustained in the case of a district court decision rendered without an accompanying opinion or citations to other cases because conflict cannot be based upon "unelaborated per curiam denials of relief . . . ." Stallworth v. Moore, 827 So. 2d 974, 977 (Fla. 2002). Even when the district court's order lacks an opinion but cites cases, "this Court does not have jurisdiction to review per curiam decisions of the district courts of appeal that merely affirm with citations to cases not pending review in this Court." Persaud v. State, 838 So. 2d 529, 531-32 (Fla. 2003) (rendering that proposition by reading together Dodi Publishing Co. v. Editorial America, S.A., 385 So. 2d 1369 (Fla. 1980), and Jollie v. State, 405 So. 2d 418 (Fla. 1981)). This Court has stated a similar rule applicable to per curiam unelaborated *denials* of relief:

> [W]e do not have jurisdiction to review per curiam unelaborated denials of relief from the district courts of appeal that . . . merely cite to a case not pending on review in this Court, or to a statute or rule of procedure, and do not contain any discussion of the facts in the case such that it could be said that the district court "expressly addresse[d] a question of law within the four corners of the opinion itself."

Gandy v. State, 846 So. 2d 1141, 1144 (Fla. 2003) (quoting Florida Star v. B.J.F., 530 So. 2d 286, 288 (Fla. 1988)).

Lastly, in Ansin v. Thurston, 101 So. 2d 808 (Fla. 1958), this Court explained that

> It was never intended that the district courts of appeal should be intermediate courts. The revision and modernization of the Florida judicial system at the appellate level was prompted by the great volume of cases reaching the Supreme Court and the consequent delay in the administration of justice. The new article embodies throughout its terms the idea of a Supreme Court which functions as a supervisory body in the judicial system for the State, exercising appellate power in certain specified areas essential to the settlement of issues of public importance and the preservation of uniformity of principle and practice, with review by the district courts in most instances being final and absolute.

Id. at 810.

2. This Court lacks jurisdiction here because the district court's denial does not have an accompanying opinion but merely cites two Florida Supreme Court cases which are still good law

In the case at hand, the First District Court of Appeal dismissed Petitioner's appeal without an opinion and cited two cases: Baker v. State, 878 So. 2d 1236 (Fla. 2004), and Pettway v. State, 776 So. 2d 930 (Fla. 2000). These cases are still good law. Petitioner contends that this dismissal expressly and directly conflicts with cases from the Fourth District Court of Appeal: Gibson v. State, 944 So. 2d 426 (Fla. 4th DCA 2006); Gibson v. State, 967 So. 2d 410 (Fla. 4th DCA 2007); Gibson v.

State, 38 So. 3d 234 (Fla. 4th DCA 2010); and Wencel v. State, 915 So. 2d 1270 (Fla. 4th DCA 2005).

While Petitioner is relying on those cases to support the substance of his claim of error as to his allegedly illegal sentence, Petitioner has not shown how the district court's denial without an accompanying opinion demonstrates express and direct conflict with the cases he cites from the Fourth District Court of Appeal. In fact, despite the fact that the district court here cited two Florida Supreme Court cases in its order, Petitioner cannot show express and direct conflict here because, as this Court has explained,

> [W]e do not have jurisdiction to review **per curiam unelaborated denials of relief** from the district courts of appeal that . . . **merely cite to a case not pending on review in this Court**, or to a statute or rule of procedure, and **do not contain any discussion of the facts** in the case such that it could be said that the district court "expressly addresse[d] a question of law within the four corners of the opinion itself."

Gandy v. State, 846 So. 2d 1141, 1144 (Fla. 2003) (quoting Florida Star v. B.J.F., 530 So. 2d 286, 288 (Fla. 1988)) (emphasis added). Therefore, there can be no express and direct conflict conferring jurisdiction to this Court for review.

CONCLUSION

Based on the foregoing, the State respectfully requests that this Honorable Court determine that it does not have jurisdiction in this cause.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. MAIL to Arrington R. Wells, DC# 191718, Wakulla Correctional Institution (Annex), 110 Melaleuca Drive, Crawfordville, Florida 32327-4963, on August 23, 2013.

CERTIFICATE OF COMPLIANCE

I certify that this brief was computer generated using Courier New 12-point font.

Respectfully submitted and certified,
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