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IN THE SUPREME COURT OF FLORIDA

CASE NO. SC13-1389

DCA NO. 3D13-45

WILLIAM L. WHIPPLE,

Petitioner,

-vs-

THE STATE OF FLORIDA,

Respondent.

BRIEF OF RESPONDENT ON JURISDICTION

ON PETITION FOR DISCRETIONARY REVIEW
FROM THE DISTRICT COURT OF APPEAL
OF FLORIDA, THIRD DISTRICT

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INTRODUCTION

Respondent, THE STATE OF FLORIDA, was the prosecution in the trial court and the Appellee in the District Court of Appeal, Third District. Petitioner, WILLIAM L. WHIPPLE, was the Defendant in the trial court and the Appellant in the District Court of Appeal. In this brief, the parties will be referred to as they stood below, or as the State and Petitioner.

STATEMENT OF THE CASE AND FACTS

Petitioner filed a petition for common law writ of habeas corpus in the Third District Court of Appeal. On January 16, 2013, the lower court issued an order treating the petition as a Florida Rule of Appellate Procedure 9.141(d) petition alleging ineffective assistance of appellate counsel, and denied the petition. At the same time, the lower court also ordered Petitioner to show cause why he should not be prevented from filing further pro se appeals, petitions, or motions in the court regarding the conviction and sentence imposed in lower tribunal Case No. 93-40908, unless the pleadings are signed by an attorney who is a duly licensed member of The Florida Bar.

Petitioner filed a Response in the lower Court. On March 20, 2013, the lower court entered an opinion prohibiting Petitioner from filing any further pro se appeals, pleadings, motions, or petitions in the Third District Court of Appeal regarding the conviction and sentence in Case No. 93-40908, unless they have been reviewed and signed by an attorney who is a duly licensed member of The Florida Bar. Whipple v. State, 112 So.3d 540 (Fla. 3rd DCA 2013). The lower court then cited to Johnson v. State, 915 So.2d 682 (Fla. 3d DCA 2005) (ordering, after repeated denials of frivolous pro se filings, that any future papers filed be reviewed and signed by an attorney licensed to practice law).

The lower court further cautioned Petitioner that a prisoner who is found by a court to have brought a frivolous suit, action, claim, proceeding, or appeal in any court is subject to having his gain-time forfeited. See Minor v. State, 963 So.2d 797 (Fla. 3d DCA 2007).

Petitioner sought rehearing, which the lower court denied. Petitioner thereafter sought discretionary review herein.

QUESTIONS PRESENTED

WHETHER THE DECISION OF THE LOWER COURT EXPRESSLY AND DIRECTLY CONFLICTS WITH THE THIS COURT'S DECISIONS OF State v. Spencer, 751 So. 2d 47 (Fla. 1999) and Attwood v. Singletary, 661 So. 2d 1216 (Fla. 1995)? (REPHRASED).

SUMMARY OF THE ARGUMENT

The grounds set forth in Petitioner's brief do not provide the Supreme Court of Florida with jurisdiction to review the Third District Court of Appeal's decision. The lower court's opinion does not expressly and directly conflict with the decisions of State v. Spencer, 751 So. 2d 47 (Fla. 1999) or Attwood v. Singletary, 661 So. 2d 1216 (Fla. 1995), as neither requires anything more than the type of notice which the lower court provided to Petitioner prior to preventing his continued filing form pro se pleadings.

ARGUMENT

THE DECISION OF THE LOWER COURT DOES NOT EXPRESSLY AND DIRECTLY CONFLICTS WITH THIS COURT'S DECISIONS OF State v. Spencer, 751 So. 2d 47 (Fla. 1999) and Attwood v. Singletary, 661 So. 2d 1216 (Fla. 1995) (REPHRASED).

Petitioner claims that the Court has jurisdiction pursuant to Rule 9.030(a)(2)(A)(iv), Fla. R. App. P., which provides for this Court's discretionary review of decisions of district courts of appeal that expressly and directly conflict with a decision of another district court of appeal or of the supreme court on the same question of law. Petitioner contends that the lower court misapplied decisions of this Court, which forms the basis of express and direct conflict jurisdiction.

The Court has explained express and direct conflict as appearing within the four corners of the majority decision. Reaves v. State, 485 So.2d 829 (Fla. 1986). The State maintains that the Court is without jurisdiction to review this decision on the grounds set forth in Petitioner, as no such express and direct conflict exists.

Petitioner's brief improperly contains and argues facts that are not contained within the four corners of the lower court's opinion. When preparing a jurisdictional brief based on

alleged decisional conflict, the only relevant facts are those facts contained within the four corners of the decisions allegedly in conflict. The Court is not permitted to base conflict jurisdiction on a review of the record. Reaves. Accordingly, this Court has specifically stated that "it is pointless and misleading to include a comprehensive recitation of facts not appearing in the decision below, with citations to the record". Reaves at 830, footnote 3.

Nevertheless, in support of his claim of jurisdiction, Petitioner argues that the lower court misapplied State v. Spencer, 751 So. 2d 47 (Fla. 1999) and Attwood v. Singletary, 661 So. 2d 1216 (Fla. 1995). As Stated in the lower court's opinion, in Spencer, the Court held that a court can restrict future pro se pleadings if it first provides a pro se litigant notice and an opportunity to respond. The lower court clearly provided Petitioner with such notice and an opportunity to respond. In response to such notice, Petitioner did in fact file a Response. However, the lower court stated that after carefully considering Petitioner's response to the court's order, it concluded that good cause had not been shown. Whipple at 47.

Prior to Spencer, the Court had never expressly addressed the issue of whether a trial court must first provide a litigant notice and a reasonable opportunity to respond before

prohibiting further pro se attacks on his or her conviction and sentence as a sanction for prior repeated and frivolous motions. In Attwood, the Court acknowledged the principle of free access to the courts, but after issuing an Order To Show Cause based on Attwood's excessive pro se filings, did prohibit Attwood from filing any civil petitions and further pleadings unless signed by a member of The Florida Bar.

Petition attempts to create conflict by arguing that the lower court's notice was not reasonable, did not provide a legal basis, and it did not generate a complete record before it imposed the sanction and did not demonstrate any legal basis. As to a record, by providing Petitioner with the opportunity to respond, it was allowing Petitioner to in fact document a record before it decided whether he would be prevented from filing any further pro se appeals, petitions, or motions in the subject cause.

As to a legal basis, the Order providing notice which directed Petitioner to show cause why he should not be prevented from filing further pro se appeals, petitions, or motions is not a part of the record herein. However, the March 20, 2013, opinion prohibiting Petitioner from filing any further pro se appeals, pleadings, motions, did in fact cite to Spencer. Thus, if he was previously unclear as to any legal basis for the lower

court's issuance of a notice and order to show cause, he was certainly on notice of such legal authority prior to his filing his motion for rehearing.

In Attwood, the defendant had filed over forty five pleadings with the Court. While recognizing the right to free access to the courts, the Court reasoned that, when justified, preventing access to court for filing frivolous and abusive pleadings, actually allows the Court to devote its resources to the legitimate claims of people who have not abused the system. It appears that Petitioner believes there is a conflict with Attwood because the lower court's order imposed a bar to filing future pro se pleadings without indicating that he had filed repetitious and frivolous pleadings which were an abuse of the system.

There is no authority in either of the cases cited to as the basis for alleged conflict requiring the lower court to explicitly detail the amount and type of prior pleadings filed before a lower court can preclude further pro se filings. The lower court's opinion preventing further pro se pleadings cited to Johnson v. State, 915 So.2d 682 (Fla. 3d DCA 2005) (ordering, after repeated denials of frivolous pro se filings, that any future papers filed be reviewed and signed by an attorney licensed to practice law) and Minor v. State, 963 So.2d 797

(Fla. 3d DCA 2007) (a prisoner who is found by a court to have brought a frivolous suit, action, claim, proceeding, or appeal in any court is subject to having his gain-time forfeited). Thus, it was clear that the lower court considered Petitioner's prior proceedings to be frivolous and subject to the bar provided for by this Court in Spencer and Attwood.

Accordingly, based on the four corners of the subject opinion, Petitioner has failed to show the existence of a direct and express conflict with Spencer or Attwood.

CONCLUSION

As indicated by the foregoing facts, authorities and reasoning, the Third District's opinion does not directly and expressly conflict with Spencer or Attwood. Thus, the State respectfully maintains that this Court lacks jurisdiction and the petition to invoke discretionary jurisdiction should be denied.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief of Respondent On Jurisdiction was mailed to William L. Whipple, DC#816787, Taylor Correctional Institution, 8629 Hampton Spring Road, Perry, FL 32348, on this 25th day of September, 2013.

_____/s/
LINDA S. KATZ
Assistant Attorney General

CERTIFICATION OF TYPE SIZE AND STYLE

Pursuant to the Rule 9.210(a)(2), Fla. R. App. P. regarding the type size of briefs filed in the Supreme Court of Florida, Respondent hereby certifies that the subject brief was typed in font Courier New, 12 point.

_____/s/
LINDA S. KATZ
Assistant Attorney General