

RECEIVED, 7/25/2013 17:03:33, Thomas D. Hall, Clerk, Supreme Court

IN THE SUPREME COURT OF FLORIDA

TROY BISHOP,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

CASE NO. SC13-_____
1st DCA Case No. 1D12-1377

JURISDICTIONAL BRIEF OF PETITIONER

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SECOND JUDICIAL CIRCUIT

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IN THE SUPREME COURT OF FLORIDA

TROY BISHOP,	:	
Petitioner,	:	
VS.	:	CASE NO. SC13-_____
	:	(1D12-1377)
STATE OF FLORIDA,	:	
Respondent.	:	
_____	:	

JURISDICTIONAL BRIEF OF PETITIONER

I STATEMENT OF THE CASE AND FACTS

This is an appeal from the decision of the First District Court of Appeal. Bishop v. State, 114 So. 3d 1123 (Fla. 1st DCA June 18, 2013).

The district court wrote a brief, unelaborated opinion, ordering a theft conviction be vacated, and affirming conviction of dealing in stolen property, citing Blackmon v. State, 58 So. 3d 343 (Fla. 1st DCA 2011), review granted, 67 So. 3d 198 (Fla. 2011). Blackmon is pending review in this court.

II SUMMARY OF THE ARGUMENT

Under Jollie v State, infra, the citation by the district court to a case pending a decision in this court creates conflict jurisdiction under article V, § 3(b)(3), Florida Constitution and Rule 9.030(a)(2)(A)(iv), Florida Rules of Appellate Procedure. Because this court has accepted Blackmon, supra, for review, it should also accept this case for review, in order to promote uniformity of decisions and to serve the interests of justice.

III ARGUMENT

ISSUE PRESENTED

THE COURT SHOULD ACCEPT THIS CASE TO PROMOTE
UNIFORMITY OF DECISIONS.

Petitioner, Troy Bishop, was convicted at jury trial of dealing in stolen property. The First District Court affirmed, citing Blackmon, supra, which is pending review in this court.

In Blackmon, the district held that a defendant could not be convicted of both theft and dealing in stolen property for the same property. That is well-settled law. The point of conflict in Blackmon is what the remedy? The question raised by the conflict between the First District's decision in Blackmon and the Fourth District's decision in Kiss v. State, 42 So. 3d 810 (Fla. 4th DCA 2010), is what is a defendant's remedy when a jury returns guilty verdicts on both theft and dealing in stolen property? In Blackmon, the district court held the proper remedy was to vacate the lesser conviction; the Fourth District held the proper remedy was new trial. Blackmon, 58 So. 3d at 347; Kiss, 42 So. 3d at 813.

While the opinion in this case is not strictly a "PCA cite," it is functionally similar to a PCA cite, in that it is a brief, unelaborated opinion, which does not discuss any law or facts, except that it cites to Blackmon, a case which is pending review in this court.

In Jollie v. State, 405 So. 2d 418 (Fla. 1981), this court recognized that a PCA cite, where the cited case is pending review in this court, creates a type of discretionary conflict

jurisdiction. Jollie recognized that a conflict existed, even where the district court did nothing more than per curiam affirm with a citation, as long as the cited case was pending in this court. See also The Florida Star v. B.J.F., 530 So. 2d 286, 288, n.3 (Fla. 1988), in which this court said:

there can be no actual conflict discernible in an opinion containing only a citation to other case law **unless one of the cases cited as controlling authority is pending before this Court**, or has been reversed on appeal or review, or receded from by this Court, or unless the citation explicitly notes a contrary holding of another district court or of this Court. See Jollie v. State, 405 So. 2d 418, 420 (Fla. 1981). (emphasis added)


Blackmon is pending review in this court. Thus, this court has jurisdiction. Because the district court has held the instant case involves the same issue as Blackmon, and Blackmon is pending review in this court, petitioner requests that this court review his case to promote uniformity of decisions.

IV CONCLUSION

Based upon the foregoing argument, reasoning, and citation of authority, petitioner requests that this Court exercise its discretion to accept jurisdiction of this case and order briefing on the merits.

Respectfully submitted,

NANCY A. DANIELS
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by electronic mail, by agreement of the parties, to Jennifer J. Moore, Office of the Attorney General, at crimapptlh@myfloridalegal.com, and a copy has been mailed to Mr. Troy Bishop, #118071, Bay Correctional Facility, 5400 Bayline Drive, Panama City, Florida 32404-5492, this day, July 25, 2013.

CERTIFICATE OF FONT SIZE

I HEREBY CERTIFY that, pursuant to Florida Rules of Appellate Procedure 9.210(a)(2), this brief was typed in Courier New 12 point.



KATHLEEN STOVER

IN THE SUPREME COURT OF FLORIDA

TROY BISHOP,

Petitioner,

v.

CASE NO. SC13-
1st DCA Case No. 1D12-1377

STATE OF FLORIDA,

Respondent.

_____/

APPENDIX TO
JURISDICTIONAL BRIEF OF PETITIONER

APPENDIX

DOCUMENT

A

Bishop v. State, 114 So. 3d 1123
(Fla. 1st DCA June 18, 2013)

114 So.3d 1123, 38 Fla. L. Weekly D1335

(Cite as: 114 So.3d 1123)

District Court of Appeal of Florida,

First District.

Troy **BISHOP**, Appellant,

v.

STATE of Florida, Appellee.

No. 1D12-1377.

June 18, 2013.

An appeal from the Circuit Court for Leon County.
Charles W. Dodson, Judge.

Nancy A. Daniels, Public Defender, Owen Chin, Assistant Public Defender, Kathleen **Stover**, Assistant Public Defender, and Glen P. Gifford, Assistant Public Defender, Office of the Public Defender, Tallahassee, for Appellant. Pamela Jo Bondi, Attorney General, and Jennifer J. Moore, Assistant Attorney General, Office of the Attorney General, Tallahassee, for Appellee.

PER CURIAM.

We reverse and remand for the lower court to vacate appellant's conviction for theft, and we affirm his conviction for dealing in stolen property. *Blackmon v. State*, 58 So.3d 343 (Fla. 1st DCA 2011), *review granted*, 67 So.3d 198 (Fla.2011). We affirm his remaining convictions without comment.

REVERSED IN PART, AFFIRMED IN PART, and REMANDED.

WOLF, PADOVANO, and LEWIS, JJ., concur.

Fla.App. 1 Dist.,2013.

Bishop v. State

114 So.3d 1123, 38 Fla. L. Weekly D1335

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