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IN THE SUPREME COURT OF FLORIDA

TROY BISHOP,

Petitioner,

Case No. SC13-1418

v.

STATE OF FLORIDA,

Respondent.

_____ /

JURISDICTIONAL BRIEF OF RESPONDENT

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PRELIMINARY STATEMENT

Respondent, 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, Troy Bishop, the Appellant in the DCA and the defendant in the trial court, will be referenced in this brief as Petitioner or proper name. "PJB" will designate Petitioner's Jurisdictional Brief. Each symbol will be followed by any appropriate page number.

STATEMENT OF THE CASE AND FACTS

On June 18, 2013, the First District Court of Appeal issued a per curiam affirmed opinion, citing Blackmon v. State, 58 So. 3d 343 (Fla. 1st DCA 2011). See Bishop v. State, 114 So. 3d 1123 (Fla. 1st DCA 2013).

SUMMARY OF ARGUMENT

The First District Court of Appeal cited as controlling authority Blackmon v. State, 58 So. 3d 343 (Fla. 1st DCA 2011), which is pending in this Court. According this Court's docket, oral arguments on Blackmon v. State, Case No. SC11-903, were held on March 6, 2012. Because Blackmon v. State is still pending in this Court, this Court has jurisdiction.

ARGUMENT

ISSUE I

WHETHER THIS COURT HAS JURISDICTION TO REVIEW THE FIRST DISTRICT'S DECISION IN BISHOP V. STATE, 114 So. 3d 1123, (Fla. 1st DCA 2013), Case No. 1D12-1377 (FLA. 1st DCA JUNE 18, 2013) (Restated)

The First District Court of Appeal issued a per curiam affirmance in this case citing Blackmon v. State, 58 So. 3d 343 (Fla. 1st DCA 2011). This Court, in Jollie v. State, 405 So. 2d 418 (Fla. 1981), stated that:

We thus conclude that a district court of appeal per curiam opinion which cites as controlling authority a decision that is either pending review or has been reversed by this Court continues to constitute prima facie express conflict and allows this Court to exercise its jurisdiction.

Id. at 420. As noted above, Blackmon is pending in this court. Blackmon v. State, Case No. SC11-903. Therefore, this Court has jurisdiction to review this case.

CONCLUSION

Based on the forgoing reason, this Court has jurisdiction to hear this case.

SIGNATURE OF ATTORNEY AND CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been furnished by electronic mail to Kathleen Stover, Esq., Assistant Public Defender, Leon County Courthouse, at kathleen.stover@flpd2.com, this 14th day of August, 2013.

Respectfully submitted and served,

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the font requirements of Fla. R. App. P. 9.210.

/s/ Jennifer J. Moore

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APPENDIX

APPENDIX

DOCUMENT

A Bishop v. State, 114 So. 3d 1123 (Fla. 1st DCA 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 af-
firm 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 com-
ment.

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

END OF DOCUMENT