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IN THE SUPREME COURT OF FLORIDA

JULIEN GARCON,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Case No. SC13-1420
4th DCA Case No. 4D12-4348

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 June 27, 2013. On June 27, 2013, the Fourth District Court of Appeal issued a per curiam affirmance without written opinion in Petitioner's case. Garcon v. State, No. 4D12-4348 (Fla. 4th DCA June 27, 2013). On that same date, the Fourth District Court of Appeal also issued a written order regarding Petitioner's frivolous filing:

ORDERED that this court finds that this appeal is frivolous; the order on appeal clearly explained to the Appellant why he failed to satisfy the manifest injustice standard necessary for withdrawing his plea, and why his claim that he submitted a timely 3.850 motion in September 1993 on which the trial court had never ruled was conclusively refuted by his own subsequent sworn motion filed in October 1996, stating he had never filed a prior motion with that court. Although the order on appeal did not address the claim that Appellant's family retained counsel to file a rule 3.850 motion whose failure to do so left Appellant time-barred, rule 3.850(b)(3) provides "A claim based on this exception shall not be filed more than 2 years after the expiration of the time for filing a motion for postconviction relief." Thus, it is clear that part of the motion was properly denied as well.

Appellant was cautioned against frivolous filing in case number 4D12-4235. The instant appeal too is entirely devoid of merit. The clerk of this court is directed to deliver a certified copy of this order to the appropriate institution for the

consideration of disciplinary procedures. §
944.279(1), Fla. Stat. (2012); further,

Appellant is directed to show cause, within
(20) days of the date of this order, why he
should not be prohibited by State v.
Spencer, 751 So. 2d 47 (Fla. 1999) from
filing future pro se pleadings in connection
with or arising out of his conviction and
sentence arising out of case no.:
1992CF010706AXX.

(Order included in Petitioner's Appendix).

SUMMARY OF THE ARGUMENT

This Court does not have jurisdiction to review the
decision of the Fourth District Court of Appeal because it is a
per curiam affirmance without written opinion. Furthermore, the
order of the Fourth District Court of Appeal does not conflict
with any of the four decisions of this Court cited by
Petitioner.

ARGUMENT

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

Petitioner attached the decision of the Fourth District Court of Appeal and asserts that the decision conflicts with decisions of this Court. However, this Court is without jurisdiction to review per curiam affirmances without written opinion. See Stallworth v. Moore, 827 So. 2d 974, 977 (Fla. 2002) ("this Court 'lacks jurisdiction to review per curiam decisions of the several district courts of appeal of this state rendered without opinion'").

Furthermore, the order of the Fourth District Court of Appeal, issued on the same date as the decision, does not conflict with any of the four cases cited by Petitioner. The facts outlined in the order are entirely consistent with the rules articulated in the four cases cited by Petitioner. See Griffin v. Sistuenck, 816 So. 2d 600, 602 (2002) (holding that specific language is not required to show that document was filed in accordance with the mailbox rule); Thompson v. State, 761 So. 2d 324, 326 (Fla. 2000) (holding that document is presumed to be timely filed if it shows it was submitted for mailing by the due date); Steele v. Kehoe, 747 So. 2d 931, 934 (Fla. 1999) (holding that attorney neglect can entitle a

defendant to file a belated 3.850 motion); Haag v. State, 591 So. 2d 614, 617 (Fla. 1992) (holding that the mailbox rule exists as a matter of Florida law).

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 Julien Garcon, #72742-004, FCI Williamsburg, P.O. Box 340, Salters, SC 29590 on August 13, 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