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IN THE SUPREME COURT OF FLORIDA

JAMMORA I. SIMMS,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Case No. SC13-1426

ON DISCRETIONARY REVIEW FROM THE
THE DISTRICT COURT OF APPEAL,
FOURTH DISTRICT OF FLORIDA

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, Simms, the appellant in the DCA and the defendant in the trial court, will be referenced in this brief as Petitioner or by proper name.

"IB" will designate Petitioner's Initial Brief on Jurisdiction. That symbol is followed by the appropriate page number.

STATEMENT OF THE CASE AND FACTS

Initially, and to avoid any possible confusion, it should be noted that Simms' name was spelled with only one "m" in the appellate court's opinion, to wit, "Sims." Sims v. State, 114 So. 3d 454 (Fla. 4th DCA 2013). Petitioner appears to be known to law enforcement under both spellings, Sims and Simms, but he is incarcerated in the Department of Corrections (DOC) under the name Simms. (See DOC website at <http://www.dc.state.fl.us/ActiveInmates/detail.asp?Bookmark=1&From=list&SessionID=164933076>).

The State cannot accept Petitioner's Statement of the Case and Facts as set forth in his brief on jurisdiction for purposes of this Court's decision on whether to accept or decline

jurisdiction. First, the Statement of the Case and the Facts contains argument which is immaterial and impertinent to the controversy between the parties. E.g., Williams v. Winn-Dixie Stores, Inc., 548 So. 2d 829 (Fla. 1st DCA 1989) (striking Williams' initial brief because it was unduly argumentative and contained matters immaterial and impertinent to the controversy between the parties). Second, and more importantly, Petitioner refers at length to a number of "facts" which are not encompassed within the "four corners of the opinion" of which Petitioner seeks review. See Hardee v. State, 534 So. 2d 706, 708 n.* (Fla. 1998) ("[F]or purposes of determining conflict jurisdiction, this Court is limited to the facts which appear on the face of the opinion").

The only relevant facts in deciding jurisdiction are those set forth in the opinion of the Fourth District in this case. The opinion of the Fourth District herein states, in toto:

Appellant appeals his convictions and sentence to life in prison for burglary of an occupied structure, robbery, burglary of a conveyance, and grand theft of a motor vehicle, all of which were committed while appellant was armed with a firearm. Appellant claims the trial court should have granted his motion for mistrial and to strike the jury panel because of comments made by the judge during voir dire. He also claims the trial court should have suppressed an out-of-court identification made by the victim as impermissibly suggestive. We find these issues to be without merit and, as such, we affirm.

Sims v. State, 114 So. 3d 454 (Fla. 4th DCA 2013).

SUMMARY OF ARGUMENT

Petitioner has improperly relied upon the record in the trial and appellate courts. The appropriate focus upon the operative facts, as contained within the "four corners" of the DCA's decision, reveals no express and direct conflict with this Court or another district court of appeal. Therefore, this Court must dismiss this case for lack of jurisdiction.

ARGUMENT

THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL IN THE INSTANT CASE IS NOT IN EXPRESS OR DIRECT CONFLICT WITH THE OPINION OF ANY OTHER DISTRICT COURT OR OF THIS COURT. (RESTATED)

Petitioner contends that this Court has jurisdiction pursuant to Florida Rule of Appellate Procedure 9.030(a)(2)(A)(iv), which parallels Article V, §3(b)(3) of the Florida Constitution. The 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."

The conflict between decisions "must be express and direct" and "must appear within the four corners of the majority decision." Reaves v. State, 485 So. 2d 829, 830 (Fla. 1986). Accord Dept. of Health and Rehabilitative Services v. Nat'l Adoption Counseling Service, Inc., 498 So. 2d 888, 889 (Fla.

1986) (rejected "inherent" or "implied" conflict; dismissed petition). In addition, it is the "conflict of decisions, not conflict of opinions or reasons that supplies jurisdiction for review by certiorari." Jenkins v. State, 385 So. 2d 1356, 1359 (Fla. 1980).

Neither the record, nor a concurring opinion, nor a dissenting opinion can be used to establish jurisdiction. Reaves; Jenkins, 385 So. 2d at 1359 ("regardless of whether they are accompanied by a dissenting or concurring opinion"). Thus, conflict cannot be based upon "unelaborated per curiam denials of relief," Stallworth v. Moore, 827 So. 2d 974 (Fla. 2002).

In Ansin v. Thurston, 101 So. 2d 808, 810 (Fla. 1958), this Court explained:

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.

Accordingly, the determination of conflict jurisdiction distills to whether the District Court's decision reached a

result opposite that of this Court or of any other district court of appeal. However, any discussion in the opinion in this case is so scant, or non-existent, that it is insufficient to show that there is a conflict with the opinion of another court. Sims v. State, 114 So. 3d 454 (Fla. 4th DCA 2013).

First, the opinion sets forth Appellant's convictions and sentences and states that the appellant is appealing them. Second, the opinion lists, **without discussing or analyzing**, the issues that Appellant has raised on appeal. Third, the opinion ends by saying, without any elaboration, "We find these issues to be without merit and, as such, we affirm." Id. The Fourth District does not cite a single case throughout the entirety of the opinion.

The Fourth District's opinion in the instant case is the functional equivalent of a per curiam affirmance without written comment. Such per curiam affirmances do not provide grounds for jurisdiction. Stallworth v. Moore, 827 So. 2d 974 (Fla. 2002). Therefore, there is no express and direct conflict, and this Court must dismiss this case for lack of jurisdiction.

CONCLUSION

Based on the foregoing reason, the State respectfully requests this Honorable Court decline to exercise jurisdiction.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the instant document has been furnished to the following by U.S. MAIL on November 6, 2013:

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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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