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IN THE SUPREME COURT OF FLORIDA

ANTOINE SMITH,

Petitioner,

Case No. SC14-1222

v.

STATE OF FLORIDA,

Respondent.

\_\_\_\_\_/

JURISDICTIONAL BRIEF OF RESPONDENT

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### PRELIMINARY STATEMENT

Respondent, 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, Antoine Smith, the petitioner 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, followed by any appropriate page number.

### STATEMENT OF THE CASE AND FACTS

The State rejects Petitioner's statement of the case and facts as extending beyond the "four corners" of the district court's decision. See Reaves v. State, 485 So. 2d 829 (Fla. 1986) (stating that the only facts relevant to a decision to accept jurisdiction based on an alleged decisional conflict are those facts contained within the "four corners" of the decisions allegedly in conflict).

The April 9, 2014, decision of the First District Court, a copy of which is attached to Petitioner's jurisdictional brief, reads as follows:

PER CURIAM.

The petition for belated appeal is denied as untimely. See Fla. R. App. P. 9.141(c)(5)(A).

## SUMMARY OF ARGUMENT

Petitioner has not established a constitutional basis for this Court to exercise its discretionary jurisdiction.

## ARGUMENT

### ISSUE I

HAS PETITIONER SHOWN A BASIS FOR THIS COURT  
TO EXERCISE ITS DISCRETIONARY JURISDICTION?  
(Restated)

### **Appellate Standard of Review and Jurisdictional Criteria**

The applicable standard of review for determinations of jurisdiction is ***de novo*** subject to the following criteria.

Fla. R. App. P. 9.030(a)(2), which parallels Article V, §3(b), Fla. Const., sets forth the bases for discretionary review as follows:

(2) **Discretionary Jurisdiction.** The discretionary jurisdiction of the supreme court may be sought to review

(A) decisions of district courts of appeal that

- (i) expressly and declare valid a state statute;
- (ii) expressly construe a provision of the state or federal constitution;
- (iii) expressly affect a class of constitutional or state officers;
- (iv) expressly and directly conflict with a decision of another district court of appeal or of the supreme court on the same question of law;

- (v) pass upon a question certified to be of great public importance;
- (vi) are certified to be in direct conflict with decisions of other district courts of appeal

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.

Petitioner contends that the decision in his case conflicts with the decision of the First District Court in Griffin v. State, 82 So. 3d 187 (Fla. 1<sup>st</sup> DCA 2012). In order to establish conflict jurisdiction, the conflict between decisions "must be express and direct" and the only relevant facts for the determination of discretionary jurisdiction 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) (rejecting "inherent" or "implied" conflict; dismissing petition). Neither the record, nor a concurring opinion, nor a dissenting opinion can be used to establish jurisdiction. Reaves, supra. 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). Conflict jurisdiction is present only when decisions which interpret the same principles of law are applied to indistinguishable facts. See Department of Revenue v. Johnston, 442 So.2d 950 (Fla. 1983).

The entire decision in Griffin reads as follows:

The petition is granted and Steven Joe Griffin is hereby afforded a belated appeal from the judgment and sentence in Santa Rosa County case number 2006-CF-1759. Upon issuance of the mandate in this cause, a copy of the opinion will be provided to the clerk of the circuit court who shall treat it as a notice of appeal. See Fla. R. App. P. 9.141(c)(6)(D).

The trial court is directed to appoint counsel to represent Griffin in the appeal if he qualifies for such an appointment.

PETITION GRANTED.

Griffin, 82 So. 3d at 187. Petitioner has pointed to no express or direct conflict between the DCA's decision in his case and the decision in Griffin. As previously stated, the only relevant facts for the determination of discretionary jurisdiction must

appear within the four corners of the majority decision and jurisdiction exists only when decisions which interpret the same principles of law are applied to indistinguishable facts. This Court's decision in Griffin cannot be the basis for a finding of express and direct conflict.

Petitioner also asserts that he is seeking certification of a question of great public importance, namely whether the First District Court has violated his rights under due process of law and equal protection and abused its discretion by failing to grant relief to similarly situated defendants in like circumstances. However, the First District Court did not certify a question in the decision below.

#### CONCLUSION

Petitioner has established no recognized basis for jurisdiction. The petition should be denied.



SIGNATURE OF ATTORNEY AND CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to Antoine Smith, DOC #310236, Lake Correctional Institution, 19225 U.S. Highway 27, Clermont, Florida 34715, by MAIL on July 2<sup>nd</sup>, 2014.

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.

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