

**IN THE SUPREME COURT OF FLORIDA**

CASE NO. SC14-1299  
DCA CASE NO. 3D13-2538

**IVAN HALL,**

**Petitioner,**

**-vs-**

**THE STATE OF FLORIDA,**

**Respondent.**

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**ON PETITION FOR DISCRETIONARY REVIEW FROM  
THE DISTRICT COURT OF APPEAL OF FLORIDA,  
THIRD DISTRICT**

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**BRIEF OF RESPONDENT ON JURISDICTION**

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## **INTRODUCTION**

Petitioner, Ivan Hall, was the defendant in the trial court and the appellant in the Third District Court of Appeal. Respondent, the State of Florida, was the prosecution in the trial court and the appellee in the Third District Court of Appeal. The parties shall be referred to as they stand in this Court.

## **STATEMENT OF THE CASE AND FACTS**

Petitioner appealed to the Third District Court of Appeal the denial of his motion to correct an illegal sentence. The district court affirmed. *Hall v. State*, 2014 WL 1722201, No. 3D13-2538, \*1 (Fla. 3d DCA April 30, 2014). The Third District found that the sentences imposed were legally permissible sentences:

The defendant, Ivan Jovan Hall, appeals the denial of his motion to correct what he contends is an illegal sentence. As the trial court's order and the record on appeal reflect that Hall's claims are without merit, we affirm.

On June 12, 2009, Hall accepted a State-offered plea whereby he: (1) admitted to violating his probation in case number 05–30956(A), for which he was on probation for burglary and grand theft, and also in case number 08–19168, for which he was on probation for grand theft; and (2) pled guilty to the new charges of grand theft in case number 08–43419 and felony fleeing in case number 08–45491. In exchange for Hall's admissions, Hall and the State agreed to the following sentences in each case, which were imposed by the trial court:

05–30956(A): ten years incarceration;

08–19168: five years incarceration to run concurrent with the sentence imposed in case number 05–30956(A);

08–43419: ten years incarceration as a habitual felony offender, to run concurrent with the sentences imposed in case numbers 05–30956(A) and 08–19168; and

08–45491: five years as a habitual felony offender, to run consecutive to the ten-year habitual felony offender sentence imposed in case number 08–43419.

Because the sentences imposed were legally permissible sentences that Hall agreed to accept, Hall's motion to correct an illegal sentence was properly denied, and we affirm.

Affirmed.

*Id.* Petitioner now seeks discretionary review in this Court.

## **QUESTION PRESENTED**

**WHETHER THIS COURT SHOULD DECLINE DISCRETIONARY JURISDICTION TO REVIEW THE THIRD DISTRICT COURT OF APPEAL'S OPINION THAT DOES NOT DIRECTLY OR EXPRESSLY CONFLICT WITH A DECISION OF ANOTHER DISTRICT COURT OR THIS COURT.**

### **SUMMARY OF THE ARGUMENT**

There is no basis upon which discretionary review can be granted in this case. The Third District Court's opinion does not conflict with any case of this Court or of any other district court in Florida. Consequently, conflict jurisdiction does not exist for the exercise of this Court's discretionary jurisdiction to review the decision below. This Court should therefore deny Petitioner's petition to review the decision of the district court.



## **ARGUMENT**

### **PETITIONER'S APPLICATION FOR DISCRETIONARY REVIEW MUST BE DENIED BECAUSE THE THIRD DISTRICT COURT OF APPEAL'S DECISION DOES NOT DIRECTLY OR EXPRESSLY CONFLICT WITH A DECISION OF ANOTHER DISTRICT COURT OR THIS COURT.**

Petitioner contends that this Court should invoke its discretionary review power to review the Third District Court of Appeal's decision in the instant case. Petitioner states that the decision conflicts with other decisions from the Second and Third District Courts of Appeal and of this Court where the courts set forth the rule of law that an illegal sentence may not be imposed pursuant to a plea bargain. Petitioner alleges that his sentence is illegal because "the Trial Court failed to orally pronounce a separate sentence for each count/offense, and the written sentencing order fails to conform to the oral pronouncement." (Petitioner's Jurisdictional Brief, p. 10). From this argument, Petitioner contends that he is entitled to vacation of his sentence and to have a new sentencing hearing because a trial court cannot impose an illegal sentence pursuant to a plea bargain. Petitioner contends that because the Third District affirmed the denial of his motion to correct illegal sentence, the decision is in direct conflict with this Court's opinion in *Williams v. State*, 500 So. 2d 501 (Fla. 1986); the Second District's opinion in *Smith v. State*, 358 So. 2d 1164 (Fla. 2d DCA 1978); and the Third District's

opinions in *Robbins v. State*, 413 So. 2d 840 (Fla. 3d DCA 1982) and *Floyd v. State*, 868 So. 2d 576 (Fla. 3d DCA 2004).

The district court's opinion in this case, however, does not discuss the claim regarding how or whether the written order conforms to the court's oral pronouncement. Petitioner's brief is based on allegations and arguments regarding claims that are not referenced or discussed in the opinion. Since these claims are beyond the four corners of the opinion, there is not any express and direct conflict. *Reaves v. State*, 485 So. 2d 829 (Fla. 1986). Furthermore, the opinion specifically states that the sentences imposed were "legally permissible," and therefore, the decision is not in conflict.<sup>1</sup>

Accordingly, this Court cannot exercise its discretionary jurisdiction to review the decision below because the decision below is not in direct or express conflict with any decision from this Court or any other district court on the same question of law. Thus, the petition to invoke discretionary review must be denied.

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<sup>1</sup> The opinion does not hold that Petitioner is precluded from relief of an illegal sentence simply because it was imposed pursuant to a plea.

## **CONCLUSION**

WHEREFORE, based on the preceding authorities and arguments, Respondent respectfully requests that this Court decline jurisdiction to review this cause.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief of Respondent was mailed to Ivan Hall, #194346, Charlotte Correctional Institution, 33123 Oil Well Road, Punta Gorda, Florida 33955 on this 8th day of July, 2014.

*s/ Jacob Addicott*  
JACOB ADDICOTT  
Assistant Attorney General

**CERTIFICATE OF TYPEFACE COMPLIANCE**

I HEREBY CERTIFY that the foregoing Response was written using 14 point Times New Roman in compliance with Fla. R. App. P. 9.210(a)(2).

*s/ Jacob Addicott*  
JACOB ADDICOTT  
Assistant Attorney General