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IN THE SUPREME COURT OF FLORIDA

CASE NO. SC14-1365

Lower Tribunal No. 3D13-2658

ANTHONY DURM,

Petitioner,

vs.

THE STATE OF FLORIDA,

Respondent.

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

BRIEF OF RESPONDENT ON JURISDICTION

**PAMELA JO BONDI
ATTORNEY GENERAL**

**JILL D. KRAMER
ASSISTANT ATTORNEY GENERAL**
Florida Bar No. 378992
Office of the Attorney General
444 Brickell Avenue, Suite 650
Miami, Florida 33131
Primary E-Mail:
CrimAppMIA@myfloridalegal.com
(305) 377-5441
(305) 377-5655 (Facsimile)

**RICHARD L. POLIN
Chief Assistant Attorney General**
Florida Bar No. 0230987

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STATEMENT OF THE CASE AND FACTS

The history of the case is set out in the petitioner's jurisdictional brief and is hereby adopted.

SUMMARY OF ARGUMENT

This Court should decline to exercise its discretion to accept this case because conflict does not appear within the four corners of the lower court opinion.

ARGUMENT

I. THIS COURT SHOULD DENY DISCRETIONARY JURISDICTION BECAUSE EXPRESS AND DIRECT CONFLICT WITH ERA V. STATE DOES NOT APPEAR WITHIN THE FOUR CORNERS OF THE LOWER COURT OPINION.

The decision of the Third District Court of Appeal in the instant case does not expressly and directly conflict with Era v. State, 141 So.3d 614 (Fla. 3d DCA 2012). Fla.R.App.P. 9.030(2)(iv).

In Aguilera v. Inservices, 905 So.2d 84, 101 (Fla. 2005), this Court stated:

We have repeatedly held that conflict between decisions must appear within the four corners of the majority decision.

It should also be noted that, according to the opinion entered in this case (Pet.'s Appendix A:2), the petitioner's remedy is to file a proper motion under Fla.R.Crim.P. 3.850. The Third District's opinion stated, "While we therefore affirm the lower court's order, which was right for the wrong reason, see Irving v. State, 627 So.2d 92 (Fla. 3d DCA 1993), we do so without prejudice to Durm filing a proper motion under rule 3.850." Therefore, there existing no express and direct conflict, the petitioner has the option of filing a Rule 3.850 motion.

CONCLUSION

Based on the foregoing, the State of Florida respectfully requests this Honorable Court to deny discretionary jurisdiction in the instant case.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the jurisdictional brief of respondent has been furnished by U.S. Mail to Anthony Durm, DC #M65961, Taylor Correctional Institution, 8515 Hampton Springs Road, Perry, Florida 32348 this 25rd day of August, 2014.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief was computer generated using Courier New 12 point font.

Respectfully submitted,

PAMELA JO BONDI
ATTORNEY GENERAL

/s/ Jill D. Kramer

JILL D. KRAMER

ASSISTANT ATTORNEY GENERAL

Florida Bar No. 378992

Attorney for Respondent, State of Fla.

Office of the Attorney General

444 Brickell Avenue, Suite 650

Miami, Florida 33131

Primary E-Mail:

CrimAppMIA@myfloridalegal.com

Secondary E-Mail:

Jill.Kramer@myfloridalegal.com

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