

IN THE SUPREME COURT OF FLORIDA

**FILED**

AUG 29 1983

SID J. WHITE  
CLERK SUPREME COURT

CASE NO. 64,042

Chief Deputy Clerk

HOLLIS JONES, )  
 )  
Petitioner, )  
 )  
vs. )  
 )  
STATE OF FLORIDA, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RESPONDENT'S BRIEF ON JURISDICTION

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PRELIMINARY STATEMENT

Petitioner was the appellant in the Fourth District Court of Appeal and the defendant in the trial court. The Respondent was the appellee and the prosecution, respectively, in the lower courts.

In the brief, the parties will be referred to as they appear before this Honorable Court.

The following symbol will be used:

"PA"                      Petitioner's Appendix

All emphasis has been added by Respondent unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

The State of Florida appealed to the Fourth District Court of Appeal an order dismissing on double jeopardy grounds an affidavit of violation of probation. Under Fla.R.App.P. 9.040(c) the Fourth District Court of Appeal treated the appeal as a petition for common law certiorari and granted certiorari and quashed the motion to dismiss. In the court's order it noted that its acceptance of the appeal as a petition for common law certiorari was "contra. State v. G.P." 429 So.2d 786 (Fla. 3d DCA 1983). There was no conflict regarding the cases's merits. Petitioner filed a motion for rehearing en banc, and an alternative motion for rehearing, or rehearing en banc or for clarification, which were denied. Petitioner then filed his notice to invoke discretionary jurisdiction.

POINT INVOLVED

WHETHER THE DECISION OF THE COURT  
BELOW EXPRESSLY AND DIRECTLY CON-  
FLICTS WITH ANOTHER APPELLATE DEC-  
ISION SO AS TO ESTABLISH THIS  
COURT'S CONFLICT JURISDICTION UNDER  
ARTICLE V, SECTION 3(b)(3), FLORIDA  
CONSTITUTION?

ARGUMENT

THE DECISION OF THE COURT BELOW DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH ANOTHER APPELLATE DECISION SO AS TO ESTABLISH THIS COURT'S CONFLICT JURISDICTION UNDER ARTICLE V, SECTION 3(b)(3), FLORIDA CONSTITUTION.

Petitioner seeks to establish this Court's "conflict" jurisdiction by arguing the decision below conflicts with other state appellate decisions. Respondent maintains that the decision sub judice does not conflict with other decisions and that, consequently, this Honorable Court lacks jurisdiction to grant Petitioner's application for discretionary review.

It is well-settled that in order to establish conflict jurisdiction, the decision sought to be reviewed must expressly and directly create conflict. Jenkins v. State, 385 So.2d 1356 (Fla. 1980). Petitioner has not and cannot demonstrate that the decision of the Fourth District Court of Appeal in the instant case expressly and directly conflicts with another state appellate decision. Moreover, the district court of appeal did not indicate in its opinion that this case expressly and directly conflicts with State v. G.P., 429 So.2d 786 (Fla. 3d DCA 1983). The district court indicated that it was treating the appeal as a petition for writ of certiorari, citing Fla.R.App.P. 9.140(c) and State v. Wilcox, 351 So.2d 89 (Fla. 2d DCA 1977), and noted that treating the appeal as a petition for certiorari was "contra. State v. G.P." (PA 1).

State v. G.P. involved a state appeal from a dismissal of a petition for juvenile delinquency on speedy trial grounds.

However, the instant case involves a probationer in adult court. Petitioner also cites J.P.W. v. State, Case No. 63,613 which is currently pending in this court. That case also involves the right of appeal in a juvenile case.

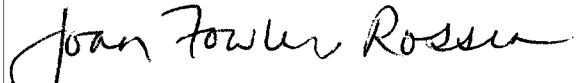
It is evident that Petitioner seeks to invoke this Honorable Court's jurisdiction in a thinly veiled attempt to pursue a second appeal. Such a use of the court's jurisdiction is not permitted. Sanchez v. Wimpey, 409 So.2d 20 (Fla. 1982). The court has repeatedly condemned such misguided efforts to invoke its discretionary jurisdiction and has repeatedly emphasized the need for finality in district court of appeal decisions. Jenkins, supra. Petitioner has failed to show express and direct conflict between the decision sub judice and any other state appellate decision and Respondent therefore maintains that this Honorable Court lacks jurisdiction to grant Petitioner's application for discretionary review.

CONCLUSION

WHEREFORE, based on the foregoing reasons and authorities cited therein, Respondent respectfully requests this Honorable Court deny Petitioner's Application for Discretionary Review.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Respondent's Brief on Jurisdiction has been furnished, by courier/mail, to GARY CALDWELL, ESQUIRE, Assistant Public Defender, 224 Datura Street - 13th Floor, West Palm Beach, Florida 33401, this 26th day of August, 1983.

  
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Of Counsel