

IN THE SUPREME COURT OF FLORIDA

CASE NO. 66,730

FILED

SID J. WHITE

APR 8 1985

CLERK, SUPREME COURT

THE STATE OF FLORIDA ~~By~~ _____
Chief Deputy Clerk

Petitioner,

-vs-

SANDY SAFFORD,

Respondent.

ON APPLICATION FOR DISCRETIONARY REVIEW

RESPONDENT'S BRIEF ON JURISDICTION

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INTRODUCTION

The respondent, Sandy Safford, was the appellant in the Third District Court of Appeal and the defendant in the trial court. The petitioner, the State of Florida, was the appellee in the District Court and the prosecution in the trial court. In this brief, the parties will be referred to as they stand before this Court. The symbol "A" will be used to refer to portions of the petitioner's appendix. All emphasis is supplied unless the contrary is indicated.

QUESTION PRESENTED

WHETHER THE PETITIONER IS PRECLUDED FROM INVOKING THE DISCRETIONARY REVIEW JURISDICTION OF THIS COURT BY ASSERTING CONFLICT BETWEEN THE CITATIONS IN THE OPINION SOUGHT TO BE REVIEWED AND ANOTHER DECISION OF THIS COURT?

STATEMENT OF THE CASE AND FACTS

The decision of the Third District Court of Appeal below, in its entirety, was as follows:

We reverse and remand for a new trial in accordance with the decision of the Florida Supreme Court in State v. Neil, 457 So.2d 481 (Fla. 1984) as applied by the court in Andrews v. State, No. 64,426 (Fla. Oct. 4, 1981) [9 FLW 432].

Reversed and remanded for new trial.

(App. 1).

ARGUMENT

BECAUSE THE PETITIONER HAS FAILED TO SHOW ANY EXPRESS AND DIRECT CONFLICT, ITS PETITION FOR DISCRETIONARY REVIEW SHOULD BE DENIED.

The petitioner has presented this Court with an utterly inadequate petition, as well as basis, for review.

The petitioner attempts to bootstrap its jurisdictional conflict contention by: (1) essentially providing the record from below; (2) referencing in its argument another Third District opinion and slip sheet opinion of the Fourth District; and (3) including a federal Court of Appeals opinion from the State of New York as reported in The Criminal Law Reporter.

All of this surplusage, of course, is irrelevant in ascertaining whether the District Court opinion under consideration expressly and directly conflicts with another decision of this Court. Jenkins v. State, 385 So.2d 1356 (Fla. 1980).

It is also clear that the two decisions cited by the District Court cannot form a jurisdictional predicate for review. As stated in Dodi Publishing Company v. Editorial America, S.A., 385 So.2d 1369 (Fla. 1980):

We reject the assertion that we should re-examine a case cited in a per curiam decision to determine if the contents of that cited case now conflict with other appellate decisions. The issue to be decided from a petition for conflict review is whether there is expressed and direct conflict in the decision of the District Court before us for review, not whether there is conflict in a prior written opinion which is now cited for authority.

Id. at 1369.

Indeed, that the whole purpose of the amendment to the Constitution of the State of Florida (Article V, Section 3(b)(3), as amended on April 1, 1980) was to preclude this very type of scrutiny of the entire "record proper" from the lower court as had been permitted prior to the constitutional amendment. England, Hunter and Williams, Constitutional Jurisdiction of Supreme Court of Florida: 1980 Reform, 32 U. Fla. L. Rev. 147, 179 (footnotes omitted). The lower court opinion, although with citations of authority, is the equivalent of a per curiam opinion ["citation PCAs"]. Id.; See Pena v. Tampa Federal Savings and Loan Association, 385 So.2d 1370 (Fla. 1980).

The petitioner is reaching for jurisdictional support to the record below and to numerous other cases and their records. In order to create jurisdictional conflict, petitioner suggests a reading of transcripts (as presented in the briefs below), simply because there are no facts supportive of petitioner's jurisdictional conclusion apparent on the face of the decision at bar. The petitioner's request for a second review of the record proper of the lower court and the decisions cited in the Third District opinion is patently improper.

Therefore this Court should deny the petition for discretionary review because petitioner has failed to reach the jurisdictional threshold as constitutionally mandated.

CONCLUSION

Based on the cases and authorities cited herein, the respondent respectfully requests this honorable Court to decline to accept jurisdiction in this cause.

Respectfully submitted,

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BY: 

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered by mail to the Office of the Attorney General, CALVIN L. FOX, Assistant, Suite 820, 401 N.W. 2nd Avenue, Miami, Florida 33128, this ^{4th} day of April, 1985.


HENRY H. HARNAGE
Assistant Public Defender