

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA,)
)
 Petitioner,)
)
 vs.)
)
 GARY JAMES MOORE,)
)
 Respondent.)
 _____)

Case No. 67,281

FILED
SID J. WHITE
AUG 15 1988
CLERK, SUPREME COURT
By _____
Chief Deputy Clerk



APPEAL FROM THE CIRCUIT COURT
IN AND FOR PUTNAM COUNTY
STATE OF FLORIDA

RESPONDENT'S BRIEF ON JURISDICTION

JAMES B. GIBSON
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

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IN THE SUPREME COURT OF FLORIDA

| | | |
|-------------------|---|-----------------|
| STATE OF FLORIDA, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| vs. |) | Case No. 67,281 |
| |) | |
| GARY JAMES MOORE, |) | |
| |) | |
| Respondent. |) | |
| _____ |) | |

RESPONDENT'S BRIEF ON JURISDICTION

STATEMENT OF THE CASE AND FACTS

Respondent accepts the statement of the case and facts set forth in Petitioner's Brief on Jurisdiction.

SUMMARY OF ARGUMENT

This Court should decline to exercise its discretionary jurisdiction where any perceived conflict with other decisions from the First District Court of Appeal has since been resolved in Richardson v. State, 10 FLW 1712 (Fla. 1st DCA July 10, 1985). All of the district courts in this state are in accord that retroactive application of the amended guidelines violates the ex post facto doctrines since such an application would result in increased punishment to the detriment of the criminal defendant.

QUESTION PRESENTED

WHETHER THIS COURT SHOULD EXERCISE ITS
DISCRETIONARY JURISDICTION TO REVIEW THE
DECISION OF THE DISTRICT COURT OF APPEAL
WHERE THAT DECISION IS IN HARMONY WITH
ALL COURTS OF THIS STATE AND THEIR
INTERPRETATION OF THE EX POST FACTO
DOCTRINES OF THE STATE AND FEDERAL
CONSTITUTIONS.

Initially, Respondent objects to the fact that the Petitioner set forth in his notice to invoke discretionary jurisdiction that the decision expressly construes a provision of the federal constitution and to a lesser extent expressly and directly conflicts with the decision of the Florida Supreme Court on the same question of law. There was no mention of any conflict with decisions from another District Court of Appeal. Yet, in the initial brief on jurisdiction, Petitioner seems to emphasize an alleged conflict of this decision with decisions on the same issue from the First District Court of Appeal. While this may not be jurisdictional, Respondent is of the opinion that it is worth noting.

The petitioner does allege that the decision in the instant case conflicts with the decisions of the First District Court of Appeal in Saunders v. State, 459 So.2d 1119 (Fla. 1st DCA 1984), Randolph v. State, 458 So.2d 64 (Fla. 1st DCA 1984), Jackson v. State, 454 So.2d 691 (Fla. 1st DCA 1984), and Dubose v. State, 468 So.2d 517 (Fla. 1st DCA 1985). Respondent submits that the notion that there is conflict between the instant decision and those cited by Petitioner from the First District Court of Appeal has recently been dispelled. In Richardson v.

State, 10 FLW 1712 (Fla. 1st DCA July 10, 1985), the First District Court joined the Fifth District Court of Appeal and the Fourth District Court of Appeal in holding that a disadvantageous guidelines change may not be applied to a defendant's crimes committed before the effective date of the change. In so ruling the court noted the fundamental principal of ex post facto jurisprudence that a court entertaining a ex post facto claim must focus upon the law in effect at the time of the offense for which the person is being punished, not the law in effect on the day of sentencing. The First District Court of Appeal cited Saunders, supra, Randolph, supra, Jackson, supra, in addition to several other similar cases from the First District in pointing out that the holding in Richardson, supra, was consistent with these prior decisions. The opinion in Richardson, supra, did recognize that these prior decisions might arguably suggest that the guidelines in effect at the time of sentencing were applicable, but the Court explained in great detail how each case was not inconsistent with Richardson. The Court reiterated that none of these decisions are inconsistent with the holding in Richardson that a defendant, who commits a post-guidelines offense, is entitled to be sentencing in accordance with the guidelines in effect on the date of his offense, if the guidelines amended subsequent to his offense have a disadvantageous effect on him. It is therefore clear that the conflict perceived by the petitioner with these cases from the First District Court of Appeal does not exist.

Petitioner next contends that the ex post facto doctrine cited in the instant decision conflicts with this Court's view of its application as set forth in Lee v. State, 294 So.2d 305 (Fla. 1974), which held "that if the subsequent statute only re-inacts previous penalty provisions without increasing any penalty provision which could have been imposed on the statute in effect at the time of the commission of the offense, then there is no violation of the ex post facto doctrine." See Petitioner's Brief. Petitioner then concludes that the implementation of sentencing guidelines, whether amended or otherwise, did not increase previous penalties for criminal offenses. While this logic may appeal to some, the reasoning is clearly fallacious. Certainly the amended guidelines did result in increased punishment to the disadvantage of criminal defendants, as the Fifth District Court of Appeal correctly pointed out in the instant decision. Petitioner's reliance on the trial court's exercise of discretion is legally and factually irrelevant.

Since the decision of the Fifth District Court of Appeal does not conflict with the decisions of any other district court in this state and is consistent with the correct interpretation of the ex post facto doctrines contained in Article I, Section 10, United States Constitution and Article I, Section 10, Florida Constitution, this Court should decline to exercise its discretionary jurisdiction in this case.

CONCLUSION

Based upon the foregoing cases, authorities and policies, this Honorable Court should decline to exercise its discretionary jurisdiction and allow the decision of the Fifth District Court of Appeal to stand.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been mailed to the Honorable Jim Smith, Attorney General, 125 N. Ridgewood Avenue, Fourth Floor, Daytona Beach, Florida 32014 and to Mr. Gary J. Moore, Inmate No. 094982, Marion C. I., Post Office Box 158, Lowell, Florida 32663-0158 this 31st day of July, 1985.



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