

IN THE SUPREME COURT OF FLORIDA

MELVIN EUGENE DANIELS,)
)
 Petitioner,)
)
 v.)
)
 STATE OF FLORIDA,)
)
 Respondent.)
)
 _____)

Case No. 67,357

RESPONDENT'S BRIEF ON JURISDICTION

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PRELIMINARY STATEMENT

The Petitioner was the defendant in the Criminal Division of the Circuit Court of the Seventeenth Judicial Circuit, in and for Broward County, Florida, and the Appellant in the Fourth District Court of Appeal. The Respondent was the prosecution and the Appellee, respectively, in the lower courts.

In the brief, the parties will be referred to as they appeared in the trial court, i.e., State and Defendant.

The symbol "A" will refer to the Petitioner's Appendix.

STATEMENT OF THE CASE AND FACTS

The State accepts the Defendant's Statement of the Case and Facts, subject to the following additions:

In his direct appeal, the Defendant raised six issues challenging his conviction. Only one of these issues dealt with the sentence; the other five issues pertained to pretrial and trial (guilt phase) matters.

The appellate court's opinion discusses only the sentencing issue. Regarding the other issues, it states, "With the exception of his sentencing, we find that none of Daniels' grievances are sufficient to merit reversal." (A-1)

SUMMARY OF THE ARGUMENT

This Court should exercise its conflict jurisdiction to review the single issue of resolving the split between the appellate courts as to the amount of credit for time served that should be granted on sentences.

The five pretrial and trial issues decided by the district court in this case should not be re-determined, since they will not affect the outcome of the petition and the district court's role as a court of final appellate jurisdiction should be respected.

ARGUMENT

POINT

THIS COURT HAS JURISDICTION TO REVIEW THE LIMITED QUESTION WHEREIN CONFLICT ARISES - THE AMOUNT OF CREDIT FOR TIME SERVED TO BE GRANTED ON THE DEFENDANT'S SENTENCE.

Pursuant to Article V, Section 3 (b)(3) of the Florida Constitution, this Court has jurisdiction to review ... "any decision of the district court of appeal that ... expressly and directly conflicts with a decision of another district court of appeal or of the Supreme Court on the same question of law." In the instant case, it is clear the decision of the Fourth District Court below conflicts with the Third District in Shepard v. State, 459 So.2d 460 (3rd DCA Fla. 1984); the Court acknowledged the conflict in its opinion (A-2). It is also clear the decision below conflicts with Shepard only on the matter of the amount of credit the Defendant should receive on his sentence for time served. The Appellate Court addressed in summary fashion the five remaining pretrial and trial issues, finding them not to be reversible error.

The State maintains this Court's discretionary jurisdiction is limited to review of the sentencing issue. In Trushin v. State, 425 So.2d 1126 (Fla. 1982), this Court, dealing with a case involving a certified question, stated:

While we have the authority to entertain issues ancillary to those in a certified case, Bell v. State, 394 So.2d 979 (Fla. 1981), we recognize the function of district courts as courts of final jurisdiction and will refrain from using that authority unless those issues affect the

outcome of the petition after review
of the certified case.

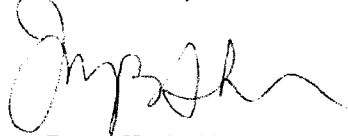
Trushin, at 1130 (emphasis added). In the present case, the pretrial and trial issues will not affect the outcome of the petition after resolution of the conflict issue on which the Defendant's petition is based. The validity of the conviction has been fully reviewed and determined by the district court of appeal in the exercise of its jurisdiction. That review should be final.

CONCLUSION

WHEREFORE, the State respectfully requests that this Court enter an order accepting jurisdiction of the instant case, limiting its review to the single area of conflict, i.e., the question of how much credit the Defendant should receive for time served.

Respectfully submitted,

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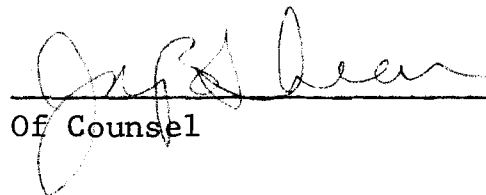


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy hereof has been furnished by courier to TATJANA OSTAPOFF, Assistant Public Defender, 224 Datura Street, 13th Floor, West Palm Beach, Florida 33401, on this 6th day of August 1985.



Of Counsel