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IN THE SUPREME COURT OF FLORIDA

CASE NO. 70,392

FILED
SID J. WHITE

JUN 1 1987

THE STATE OF FLORIDA

CLERK, SUPREME COURT

Petitioner,

By _____
Deputy Clerk

vs.

CARLOS RODRIGUEZ,

Respondent.

* * * * *

BRIEF OF RESPONDENT ON JURISDICTION

* * * * *

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TABLE OF CONTENTS

	<u>PAGE</u>
INTRODUCTION.	1
STATEMENT OF THE CASE AND FACTS	1-2
QUESTION PRESENTED.	3
SUMMARY OF THE ARGUMENT	4
ARGUMENT	
THE DECISION OF THE THIRD DISTRICT COURT OF APPEAL IN THIS CASE DOES NOT CONFLICT WITH THE DECISION OF THIS COURT IN <u>SCOTT v. STATE,</u> 464, So.2d 1171 (FLA. 1985)	5-6
CONCLUSION	7
CERTIFICATE OF SERVICE.	8

TABLE OF CONTENTS

Cases

Page

Scott v. State,
464 So.2d 1171 (Fla. 1985)

OTHER AUTHORITIES

Rule 3.190(c)(4), Fla. R.Cr. P.

Rule 3.850, Fla. R. Cr. P.

INTRODUCTION

Petitioner was the prosecution in the trial court and appellant in the District Court of Appeal. Respondent was the defendant in the trial court and appellee in the District Court of Appeal.

STATEMENT OF THE CASE AND FACTS

Respondent was charged with various crimes in the trial court. He filed a Sworn Motion to Dismiss under Rule 3.190(c)(4), Fla. R.Cr.P., and the Petitioner moved to strike that motion, alleging that the jurat was defective. The jurat stated that "the facts contained in the foregoing Motion to Dismiss are true and correct to the best of his knowledge." It has been Respondent's position that the language "to the best of his knowledge" was surplusage, and not language which would serve to foreclose a prosecution for perjury.

The trial court denied the petitioner's motion to strike, and granted Respondent's Sworn Motion to Dismiss.

Petitioner took the case to the Third District Court of Appeal, which affirmed the trial court's decision.

Notice of invocation of this Court's discretionary

jurisdiction to review the decision was filed by Petitioner
April 15, 1987.

QUESTION PRESENTED

WHETHER THE DECISION OF THE THIRD DISTRICT COURT OF APPEAL IN THIS CASE DOES NOT CONFLICT WITH THE DECISION OF THIS COURT IN SCOTT v. STATE, 464 So.2d 1171 (Fla. 1985)

SUMMARY OF THE ARGUMENT

The rule of law rendered by the Third District Court of Appeal in the case at bar does not conflict with this Court's decision in Scott v. State, 464 So.2d 1171 (Fla. 1985), in that Scott specifically dealt with a Rule 3.850 motion for postconviction relief and not a Rule 3.190(c)(4) sworn motion to dismiss. It is clear that Rule 3.987, Florida Rules of Criminal Procedure sets out word for word what language must be included in a Rule 3.850 motion jurat. No such detail is specified under the Rules for a Rule 3.190(c)(4) motion. However, the case law on this issue is clear and the Respondent has unqualifiedly complied with its requirements.

ARGUMENT

THE DECISION OF THE THIRD DISTRICT COURT
OF APPEAL IN THIS CASE DOES NOT CONFLICT
WITH THE DECISION OF THIS COURT IN
SCOTT v. STATE, 464 So.2d 1171 (Fla.
1985).

The discretionary jurisdiction of this Court may be sought to review decisions of district courts of appeal in six (6) circumstances under Rule 9.030(a)(2)(A), Florida Rules of Appellate Procedure. None of those circumstances apply to the instant case.

The rule of law announced by the Third District Court of Appeal in the case at bar does not conflict with this Court's decision in Scott v. State, 464 So.2d 1171 (Fla. 1985). Therefore, the court's exercise of its discretionary jurisdiction to review the decision in question is not warranted.

In the instant case, the Respondent, CARLOS RODRIGUEZ, filed a Sworn Motion to Dismiss pursuant to Rule 3.190(c)(4), Florida Rules of Criminal Procedure, stating on oath that the facts contained therein are "true and correct to the best of his knowledge," thus complying with the requirement that a deponent attest to the statement's truth, unqualifiedly and thus expose himself to the penalties of perjury. The Third District Court of Appeal has agreed with MR. RODRIGUEZ's position, and in doing so, has not rendered an opinion in conflict with the decision of this Court in Scott v. State, 464 So.2d 1171 (Fla. 1985).

Scott specifically dealt with a Rule 3.850 motion for postconviction relief and not a Rule 3.190(c)(4) motion to dismiss, such as the instant case. Although the policy reasons which govern are the same for motions under both rules, that is, to prevent the use of false allegations, the fact is that Rule 3.987, Florida Rules of Criminal Procedure sets out word for word what magical language is to be included in a Rule 3.850 motion jurat. Whereas, no such detail is specified under the Rules for the jurat of a Rule 3.190(c)(4) motion.

However, the case law is clear, and MR. RODRIGUEZ has unqualifiedly complied with its requirements. This argument shall be reserved, if necessary, for the Respondent's brief on the merits of this case.

CONCLUSION

Based upon the foregoing, this Court's exercise of its discretionary jurisdiction to review the decision in question is not warranted.

Respectfully submitted,



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