

8-11

IN THE SUPREME COURT OF FLORIDA

DAVID M. HARRIEL,)
)
 Petitioner,)
)
 v.)
)
 STATE OF FLORIDA,)
)
 Respondent.)
 _____)

CASE NO. 70,852

FILED
SID J. WHITE
JUL 20 1987
CLERK, SUPREME COURT
By _____
Deputy Clerk

PETITIONER'S BRIEF ON JURISDICTION

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PRELIMINARY STATEMENT

Petitioner was the Appellant in the court below and the defendant in the trial court. Respondent was the Appellee in the court below and the prosecution in the trial court. A copy of the district court opinion is attached to this brief (A1-3). In the brief the parties will be referred to as they appear before this Honorable Court.

The following symbols will be used:

"R" Record on Appeal

"A" Appendix

STATEMENT OF THE CASE AND FACTS

Petitioner was convicted of sale and possession of cocaine. Those offenses were committed after the effective date of Section 27.3455, Florida Statutes (1985), which requires imposition of \$200 court costs for each felony conviction. Nevertheless, the trial court imposed costs pursuant to this statute. The Fourth District Court of Appeal in its decision filed June 10, 1987, refused to strike the ex post facto application of Section 27.2455 to Petitioner, on the sole basis that no contemporaneous objection to the costs had been made in the trial court.

By timely notice, Petitioner commenced this action seeking this Court's review of the decision of the Fourth District Court of Appeal below.

SUMMARY OF THE ARGUMENT

In the decision of the Fourth District Court of Appeal below, it was held that because Petitioner did not object to the ex post facto imposition of court costs pursuant to Section 27.3455(1), Florida Statutes (1985) to crimes which occurred before the effective date of that statute,* he was precluded from challenging the costs on direct appeal. This decision directly and expressly conflicts with Webber v. State, 497 So.2d 995 (Fla. 5th DCA 1986), in which the Fifth District Court of Appeal held that such ex post facto imposition of costs is "the type of sentencing error which may be raised on appeal notwithstanding the defendant's failure to object at sentencing because it results in an illegal sentence." Id. at 996. Since the instant decision directly and expressly conflicts with other district courts of appeal on the same issue of law, this Court has jurisdiction to review it.

* State v. Yost, 12 F.L.W. 221 (Fla. May 7, 1987).

ARGUMENT

THE DECISION IN THE INSTANT CASE CONFLICTS WITH DECISIONS OF OTHER DISTRICT COURTS OF APPEAL ON THE ISSUE OF WHETHER A DEFENDANT MUST CONTEMPORANEOUSLY OBJECT IN ORDER TO CHALLENGE ON APPEAL THE EX POST FACTO IMPOSITION OF COSTS.

In the decision of the Fourth District Court of Appeal below, it was held that because Petitioner did not object to the ex post facto imposition of court costs pursuant to Section 27.3455(1), Florida Statutes (1985) to crimes which occurred before the effective date of that statute,¹ he was precluded from challenging the costs on direct appeal. This decision directly and expressly conflicts with Webber v. State, 497 So.2d 995 (Fla. 5th DCA 1986), in which the Fifth District Court of Appeal held that such ex post facto imposition of costs is "the type of sentencing error which may be raised on appeal notwithstanding the defendant's failure to object at sentencing because it results in an illegal sentence." Id. at 996. Moreover, the decision of the Fourth District Court of Appeal in the instant case also conflicts with Ramsey v. State, 12 F.L.W. 1318 (Fla. 2d DCA May 20, 1987). As the Second District Court of Appeal pointed out:

When the court announced it was imposing \$200 court costs, the appellant had no reason to know that some of the costs were being imposed pursuant to section 27.3455. He, therefore, had no reason to object to the ex post facto application of the statute ... in order to preserve the issue for appellate review.

¹ State v. Yost, 12 F.L.W. 221 (Fla. May 7, 1987).

The Second District Court of Appeal went on to strike the ex post facto imposition of costs in that case.


Since the instant decision directly and expressly conflicts with other district courts of appeal on the same issue of law, this Court has jurisdiction to review it. Furthermore, this Court should accept jurisdiction of this cause, since to refuse to do so would result in the disparate treatment of the cost issue in the various districts of this state, with the result that defendants in the Second and Fifth Districts would have their ex post facto costs stricken regardless of whether they objected below, while defendants in the Fourth District would have to pay costs despite their ex post facto application simply because of the failure of trial counsel to timely object. Principles of fairness and justice preclude such radically different results, and only this Court is in the position to remedy the situation.

CONCLUSION

Based on the foregoing argument and authorities cited therein, Petitioner respectfully requests this Court to reverse the decision of the trial court and remand this cause with proper directions.

Respectfully submitted,

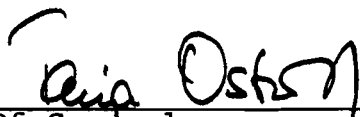
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to AMY LYNN DIEM, Assistant Attorney General, Elisha Newton Dimick Building, Suite 204, 111 Georgia Avenue, West Palm Beach, Florida, 33401 by courier this 17th day of July, 1987.



Of Counsel