

IN THE SUPREME COURT OF FLORIDA

CASE NO. 74,497

4th DCA CASE NO. 88-1511

ANTONIO MARTINEZ,  
Appellee/Petitioner,  
vs.  
STATE OF FLORIDA,  
Appellant/Respondent.

1988 03 15 09  
CLERK OF THE SUPREME COURT  
FLORIDA  
Deputy Clerk

\*\*\*\*\*

RESPONDENT'S BRIEF ON JURISDICTION

\*\*\*\*\*

On Review from the District Court  
of Appeal of Florida, Fourth District

ROBERT A. BUTTERWORTH  
Attorney General  
Tallahassee, FL 32399-1050

SYLVIA H. ALONSO  
Assistant Attorney General  
Fla. Bar No. 767190  
111 Georgia Avenue, Ste. 204  
West Palm Beach, FL 33401  
(407) 837-5062

Counsel for Appellee

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF CITATIONS	ii
PRELIMINARY STATEMENT	1
STATEMENT OF THE CASE AND FACTS	2
SUMMARY OF THE ARGUMENT	3
ARGUMENT	4-6
THE DECISION OF THE COURT BELOW DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH <u>FIELDS V. STATE</u> , 402 SO.2D 46 (FLA. 1ST DCA 1981) OR <u>THOMPSON V. STATE</u> , 14 FLW 379 (FLA. JULY 20, 1989).	
CONCLUSION	7
CERTIFICATE OF SERVICE	7

TABLE OF CITATIONS

<u>CASE</u>	<u>PAGE</u>
<u>Fields v. State,</u> 402 So.2d 46 (Fla. 1st DCA 1981)	3, 4, 5, 6
<u>Jenkins v. State,</u> 385 So.2d 1356, 1359 (Fla. 1980)	4
<u>Miranda v. Arizona,</u> 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966)	5
<u>Thompson v. State,</u> 14 FLW 379 (Fla. July 20, 1989)	3, 4, 6

OTHER AUTHORITY

	<u>PAGE</u>
Article 5, §3(b)(3) <u>Fla. Const.</u> (1980)	4

PRELIMINARY STATEMENT

Respondent was the Appellant in the District Court of Appeal and was the prosecution in the trial court. Petitioner was the Appellee in the appeal proceedings and the defendant at the trial.

STATEMENT OF THE CASE AND FACTS

Respondent accepts Petitioner's Statement of Case and Facts as being substantially true and correct except as modified herein.

SUMMARY OF THE ARGUMENT

The facts of the instant case are not substantially the same as the facts presented in Fields v. State, 402 So.2d 46 (Fla. 1st DCA 1981) and Thompson v. State, 14 FLW 379 (Fla. July 20, 1989). Thus, as there is no conflict presented, this Court lacks jurisdiction for discretionary review of the instant case.

ARGUMENT

THE DECISION OF THE COURT BELOW  
DOES NOT EXPRESSLY AND DIRECTLY  
CONFLICT WITH FIELDS V. STATE,  
402 SO.2D 46 (FLA. 1ST DCA 1981)  
OR THOMPSON V. STATE, 14 FLW 379  
(FLA. JULY 20, 1989).

Petitioner seeks to establish this Court's "conflict" jurisdiction in accordance with Article 5, §3(b)(3) Fla. Const. (1980), by arguing that the decision below conflicts with the decision announced in Fields v. State, 402 So.2d 46 (Fla. 1st DCA 1981) and Thompson v. State, 14 FLW 379 (Fla. July 20, 1989). Respondent disagrees as Petitioner has failed to demonstrate that the decision sub judice, on its face, conflicts with other decisions. This Honorable Court therefore lacks jurisdiction for discretionary review of the instant case.

It is well settled that in order to establish conflict jurisdiction, the decision sought to be reviewed must expressly and directly create conflict with a decision of another District Court of Appeal or of the Supreme Court on the same question of law. Article 5, §3(b)(3) Fla. Const.; Jenkins v. State, 385 So.2d 1356, 1359 (Fla. 1980). Thus, conflict jurisdiction is properly invoked when the district court announces a rule of law which conflicts with another district, or when the district court applies a rule of law to produce a different result in a case which involves substantially the same facts as another case. Mancini v. State, 312 So.2d 732, 733 (Fla. 1975). Petitioner seeks to assert conflict jurisdiction under the latter situation

alleging that the District Courts have taken different approaches in evaluating strikingly similar facts to yield opposite results (See AB 8).

However an analysis of the facts presented in Fields v. State, 402 So.2d 46 demonstrates that the facts therein are substantially different from those presented in the instant case. Applying the totality of the circumstances test to determine if the accused waived his right to counsel, the Fields court considered the testimony of a court-appointed psychologist who testified that the defendant therein had reduced mental ability and would have trouble understanding his Miranda<sup>1</sup> rights as they were read to him. 402 So.2d at 47. Furthermore, there was evidence in the record that the police had lied to the defendant in order to obtain his confession. Id.

In contrast, there was no evidence sub judice that Petitioner was mentally impaired or adversely influenced by police. Rather, Appellant signed a written rights waiver form and had been advised of his constitutional rights, and waived them, at least three previous times. (See AB A-3, A-4). Furthermore, the Fourth District stated in its opinion that:

... in our judgment the facts in this case are not comparable to those circumstances in which a defendant's statements or questions indicate that he is requesting counsel or does not understand his right to counsel. (AB A-5).

---

<sup>1</sup> Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966)

Based on the foregoing, the instant case is likewise factually different from Thompson v. State, 14 FLW 379 (Fla. July 20, 1989). In Thompson the defendant affirmatively stated that although he had requested an attorney, he did not have the money to pay for one. 14 FLW at 381. Additionally, there is no evidence in Thompson that the defendant therein had signed a written rights waiver form or had previously and consistently waived his rights as did the Petitioner sub judice.

As a result, the facts presented in both Fields v. State, 402 So.2d 46 and Thompson v. State, 14 FLW 379 are substantially different from the facts presented herein. As there is no conflict with the case at bar, this Court lacks discretionary jurisdiction to review the instant case.

CONCLUSION

Since no conflict between the decision sub judice and other appellate decisions has been established, Respondent would ask that this Court decline to accept jurisdiction in this case.

Respectfully submitted,

ROBERT A. BUTTERWORTH  
Attorney General  
Tallahassee, FL



SYLVIA H. ALONSO  
Assistant Attorney General  
Fla. Bar No. 767190  
111 Georgia Avenue, Suite 204  
West Palm Beach, FL 33401  
(407) 837-5062

Counsel for Appellee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Respondent's Brief on Jurisdiction has been furnished by courier to JEFFREY L. ANDERSON, Assistant Public Defender, 301 N. Olive Avenue, 9th Floor, West Palm Beach, FL 33401 this 22<sup>ND</sup> day of August, 1989.

  
\_\_\_\_\_  
Of Counsel