

IN THE SUPREME COURT OF FLORIDA

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FLORIDA SUPREME COURT

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WALLACE BOUDREAUX,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

CASE NO.

75,163

DCA CASE NO. 88-3078

PETITIONER'S BRIEF ON THE JURISDICTION

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PETITIONER'S BRIEF ON JURISDICTION

I. PRELIMINARY STATEMENT

Petitioner, Wallace Boudreaux, was the defendant in the circuit court and **the** appellant in the district court and will be referred to in this brief as the petitioner. The State of Florida was the prosecution below and will be referred to herein as the state. All references to the district court opinion, which is appended to this brief, will **be** by use of the symbol "A," followed by the appropriate page number in brackets. All emphasis is supplied unless otherwise indicated.

II. STATEMENT OF THE CASE AND FACTS

The district court opinion contains the complete statement of the facts in this case CA 1-41.

111. SUMMARY OF ARGUMENT

The district court held, inter alia, that "because the appellant did fail to object, the remaining conditions of probation are not preserved for review." CA 21 This holding directly and expressly conflicts with Miller v. State, 407 So.2d 959, 960 (Fla. 1981), which held that "a defendant is not required to object to conditions of probation in order to preserve them for appellate review." The district court holding also directly and expressly conflicts with at least two other district court decisions on the same point of law.

Moreover, the first district court has recently held in Larson v. State, No. 75,085, similar to its holding in the case sub judice, that conditions of probation must be preserved for appellate review with a contemporaneous objection. This case, as well as Larson, expressly and directly conflicts with Miller. Because the first district is consistently misapplying the contemporaneous objection rule, this Court should accept jurisdiction to clarify the conflict and correct the misapplication.

IV. ARGUMENT

ISSUE PRESENTED

THE DISTRICT COURT'S HOLDING THAT CONDITIONS OF PROBATION MUST BE OBJECTED TO FOR PRESERVATION OF APPELLATE REVIEW DIRECTLY AND EXPRESSLY CONFLICTS WITH MILLER V. STATE, 407 SO.2D 959 (FLA. 4TH DCA 1981); DIORIO V. STATE, 359 SO.2D 45 (FLA. 2D DCA 1978); AND COULSON V. STATE, 342 SO.2D 1042 (FLA. 4TH DCA 1977), ON THE IDENTICAL POINT OF LAW.

Article V, section 3(b)(3) of the Florida Constitution permits this Court to claim discretionary jurisdiction to review a decision of a 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." The essential purpose behind this provision is to allow this Court to clarify confusion among the several districts on points of law which, on their face, cannot be reconciled.

In this case, the First District Court of Appeal held "because the appellant did fail to object, the remaining conditions [of probation] are not preserved for review." CA 21 This holding conflicts with three decisions from other district courts of appeal on this same point of law:

Miller v. State, 407 So.2d 959, 960 (Fla. 4th DCA 1981): "Ordinarily a defendant is not required to object to conditions of probation in order to preserve them for appellate review."

DiOrio v. State, 359 So.2d 45, 46 (Fla. 2d DCA 1978): "We hold that his right of appeal [of conditions of probation] is not contingent upon the registering of objections at the time probation is granted."

Coulson v. State, 342 So.2d 1042, 1043 (Fla. 4th DCA 1977): "The state contends that Coulson has not preserved the foregoing point on appeal because he offered no objection to the condition at sentencing, arguing that his

silence acted as a waiver of objection. We reject such a position."

These cases amply demonstrate the clear, express, and direct conflict between the opinion below and these other district court decisions. If the true purpose of the conflict jurisdiction of this Court is to resolve confusion among the several districts on the same point of law, then this Court should accept review of this case to accomplish that purpose. To deny review in this instance would not merely continue the confusion that is already brewing in the district courts on the rights of appellate review of conditions of probation, but add to that confusion by declining to resolve it.

Furthermore, this case is of exceptional importance in that it directly impacts upon a defendant's right to appeal. The district court's opinion expressly denies petitioner his statutory right to take an appeal from the unconstitutional conditions imposed on his probation. The denial of this right cannot be understated. This case presents the same issue raised in Larson v. State, case number 75,085, and should be considered together with that case.

Accordingly, because the opinion below directly and expressly conflicts with at least three decisions from other district courts of appeal, this court should invoke its discretionary jurisdiction to review this case.

V. CONCLUSION

For the foregoing reasons, the petitioner respectfully requests this Court to accept review of the district court opinion in this case and grant oral argument so that the issues pending in his appeal may be properly and fully heard.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Petitioner's Jurisdictional Brief has been furnished **by** hand-delivery to William A. Hatch, Assistant Attorney General, The Capitol, Tallahassee, Florida, 32302; and a copy has been mailed to Mr. Wallace Boudreaux, #113612, Martin Correctional Inst., 1150 SW Allapattah Road, Indiantown, Florida, 33456, on this 12th day of December, 1989.



LAWRENCE M. KORN