IN THE SUPREME COURT OF FLORIDA

WILLIAM C. BULGIN,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

CASE NO. SC03-2214

AMENDED JURISDICTIONAL BRIEF OF RESPONDENT

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PRELIMINARY STATEMENT

Respondent, the State of Florida, the Appellant in the District Court of Appeal (DCA) and the prosecuting authority in the trial court, will be referenced in this brief as Respondent, the prosecution, or the State. Petitioner, William C. Bulgin, the Appellee in the DCA and the defendant in the trial court, will be referenced in this brief as Petitioner or proper name.

"PJB" will designate Petitioner's Jurisdictional Brief. That symbol is followed by the appropriate page number.

A bold typeface will be used to add emphasis. Italics appeared in original quotations, unless otherwise indicated.

STATEMENT OF THE CASE AND FACTS

The State accepts Petitioner's statement of the case and facts to the extent it summarizes the facts that were set forth by the appellate court. The facts pertinent to this Court's jurisdictional determination are set forth in the First District Court of Appeal opinion:

> The appellees/defendants were all arrested on December 15, 2000 for the sale of a controlled substance. The three agreed to cooperate with law enforcement in a continuing drug investigation and were released. On or about December 20, 2000, the defendants, accompanied by their attorneys, agreed to provide substantial assistance to law enforcement by conducting drug buys. The law enforcement officials agreed that no charges would be filed until their assistance was complete. These agreements satisfied

> the defendants' concern that formal charges and court appearances would jeopardize their covert assistance. The defendants did not sign speedy trial waivers and there was no discussion of the issue. After differing levels of cooperation with law enforcement, the defendants were arrested and charged. The defendants filed motions for discharge based on the speedy trial rule, Fla. R. Crim. P. 3.191, which were granted by the trial courts. The State argues that the speedy trial rule is not applicable because the defendants caused the delay. We agree and therefore reverse.

State v. Bulgin, 858 So. 2d 1096 (Fla. 1st DCA 2003).

SUMMARY OF ARGUMENT

The "four corners" of the DCA's decision reveals no operative facts which demonstrates an express and direct conflict with Williams v. State, 757 So. 2d 597 (Fla. 5th DCA 2000). The cases address different propositions of law which are not in conflict. Absent any express and direct conflict between the decision below and decisions of this Court or of any other district court, this Court should decline to exercise jurisdiction.

ARGUMENT

ISSUE I

WHETHER THERE IS EXPRESS AND DIRECT CONFLICT BETWEEN THE DECISION BELOW AND WILLIAMS V. STATE, 757 So. 2d 597 (Fla 5th DCA 2000)(Restated).

Appellate Standard of Review

The applicable appellate standard of review for claims of direct and express conflict is **de novo** subject to the following criteria.

Jurisdictional Criteria

Petitioner contends that this Court has jurisdiction pursuant to Article V, § 3(b)(3), Fla. Const. See Fla. R. App. P. 9.030(a)(2)(A)(iv). The constitution provides:

> The supreme court ... [m]ay review any 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 conflict between decisions "must be express and direct" and "must appear within the four corners of the majority decision." Reaves v. State, 485 So.2d 829, 830 (Fla. 1986). Accord Dept. of Health and Rehabilitative Services v. Nat'l Adoption Counseling Service, Inc., 498 So.2d 888, 889 (Fla. 1986)(rejected "inherent" or "implied" conflict; dismissed petition). Neither the record, nor a concurring opinion, nor a dissenting opinion can be used to establish jurisdiction. Reaves, supra; Jenkins v. State, 385 So.2d 1356, 1359 (Fla. 1980)("regardless of whether they are accompanied by a dissenting or concurring opinion"). In addition, it is the

"conflict of *decisions*, not conflict of *opinions* or *reasons* that supplies jurisdiction for review by certiorari." Jenkins, 385 So. 2d at 1359.

In Ansin v. Thurston, 101 So. 2d 808, 810 (Fla. 1958), this Court explained:

> It was never intended that the district courts of appeal should be intermediate courts. The revision and modernization of the Florida judicial system at the appellate level was prompted by the great volume of cases reaching the Supreme Court and the consequent delay in the administration of justice. The new article embodies throughout its terms the idea of a Supreme Court which functions as a supervisory body in the judicial system for the State, exercising appellate power in certain specified areas essential to the settlement of issues of public importance and the preservation of uniformity of principle and practice, with review by the district courts in most instances being final and absolute.

In the case at hand, the determination of conflict jurisdiction distills to whether the district court's decision reached a result opposite to Williams v. State, 757 So. 2d 597 (Fla. 5th DCA 2000).

> Jurisdiction to review because of an alleged conflict requires a preliminary determination as to whether the Court of Appeal has announced a decision on a point of law which, if permitted to stand, would be out of harmony with a prior decision of this Court or another Court of Appeal on the same point, thereby generating confusion and instability among the precedents.

Kyle v. Kyle, 139 So.2d 885 (Fla. 1962). The conflict must be

such that if the case at hand and the Williams case were rendered by the same court, the Williams case would have the effect of overruling the instant case. Id.

The decision below is not in "express and direct" conflict with Williams v. State.

"This court may exercise discretion to review a decision of the district court of appeal that expressly and directly conflicts with a decision of another district court of appeal or the supreme court on the same question of law." Jenkins v. State, 385 So.2d 1356, 1359 (Fla. 1980). The "four corners" of the DCA's decision reveals no operative facts which demonstrates an express and direct conflict with Williams v. State, 757 So. 2d 597 (Fla. 5th DCA 2000). Moreover, the cases address different propositions of law which are not in conflict.

Conflicts between decisions must be express and direct, i.e., it must appear within the four corners of the majority decision. Reaves v. State, 485 So.2d 829 (Fla. 1986). In a footnote, the Reaves court noted the following:

> The only facts relevant to our decision to accept or reject such petitions are those facts contained within the four corners of the decisions allegedly in conflict. As we explain in the text above, we are not permitted to base our conflict jurisdiction on a review of the record or on facts recited only in dissenting opinions. Thus, it is pointless and misleading to include a comprehensive recitation of facts not appearing in the decision below, with citations to the record.

Id. That is, the decision of the district court of appeal must contain facts within the text of the opinion itself to support conflict jurisdiction.

Conflict must be obvious and patently reflected in the decisions relied on. Trustees of Internal Imp. Fund v. Lobean, 127 So.2d 98,101 (Fla. 1961). The conflict must result from an application of law to facts which are in essence on all fours, without any issue as to the quantum and character of proof. Id.

The facts set forth by the lower court decision in the case at hand are clearly distinguishable from the facts found in Williams. In the case at hand, Petitioner was arrested on December 15, 2000 for the sale of a controlled substance. He agreed to cooperate with law enforcement in a continuing drug investigation by providing substantial assistance and was released. Law enforcement agreed not to file charges until his assistance was complete. The agreement satisfied Petitioner's concern that formal charges and court appearances would jeopardize his covert assistance. Petitioner did not sign a speedy trial waiver. After the substantial assistance broke down, Petitioner was charged. The facts in Williams v. State, supra, are different. In Williams, the defendant was arrested for selling cocaine and later agreed to assist law enforcement

as an informant. Id. At 598. As a result of the defendant's agreement, "[t]he police then effected what the state attorney termed an 'unarrest'." Id. After acting as an agent for the police for a number of weeks, the defendant was again arrested for the same crime for which he had been "unarrested." Id.

In Williams, the police arrested the defendant, "unarrested" the defendant, and then rearrested him. In the case at hand, no such "unarrest" took place. As the First District Court of Appeal pointed out in its opinion, the case at hand had nothing to do with the fact of an "unarrest," as did the Williams case:

> The defendants cite Williams v. State, 757 So. 2d 597 (Fla. 5th DCA 2000) as controlling authority. In Williams, the defendant was arrested for selling cocaine and later agreed with police to assist in drug enforcement operations as an informant. Id. at 598. "The police then effected what the state attorney termed an 'unarrest.'" Id. The Fifth District Court of Appeal held that the initial arrest starts the running of the speedy trial time and that, for purposes of the rule, there is no such thing as an "unarrest." Id. We agree with that holding, but that is not the case presented here. The defendants were not subject to any procedures labeled as an "unarrest," and the exception under the speedy trial rule upon which we base our ruling, Fla. R. Crim. P. 3.191(j)(2) was not decided in Williams.

State v. Bulgin, 858 So. 2d at 1096. Consequently, the facts of the instant case are not on all fours with Williams v. State.

More importantly, as stated by the appellate court below, the case at hand was decided on an entirely different point of law than in Williams. Review for conflict of decisions is not

proper where the cases address different propositions of law. Curry v. State, 682 So.2d 1091 (Fla. 1996). The instant case and Williams address completely different propositions of law which are not in conflict.

In the case at hand, Petitioner filed a motion for discharge based on the speedy trial rule, Fla. R. Crim. P. 3.191, which was granted by the trial court. On appeal, the State argued that the speedy trial rule was not applicable because Petitioner caused the delay. The State relied upon an exception to the speedy trial rule, Florida Rule of Criminal Procedure 3.191(j)(2), and asserted that the failure to hold trial was attributable to the accused. The appellate court agreed and reversed.

In Williams, the appellate court clearly identified the legal issue to be addressed in that case: "[T]his appeal must now resolve the legal issue of whether a person can be arrested for a crime, unarrested, and then rearrested, and, if so, whether the first arrest starts the running of the speedy trial time, or the second arrest, or conceivably, the third, fourth, fifth, etc." Williams v. State, 757 So. 2d at 598. Without question, this is a completely different legal issue than what the First District Court considered in the case at hand. The appellate court in Williams never considered the exception to

the speedy trial rule that the delay was attributable to the accused, as was asserted in the case at hand. Instead, the court determined whether the state could "unarrest" a defendant in order to comply with the speedy trial rules. This was not the legal issue before the First District Court of appeal in the case at hand.

The Williams case and the instant case were resolved on different factual and legal grounds. To be sure, Petitioner's Jurisdictional Brief admits that there is no direct and express conflict. In an attempt to explain that direct and express conflict exists despite the fact that the appellate court in Williams never addressed the issue of the Florida Rule of Criminal Procedure 3.191(j)(2) exception to the speedy trial rule as did the appellate court in the case at hand, Petitioner states: "Thus, **while the Fifth District never specifically discussed subsection (j)(2) in its opinion**, it nevertheless 'decided' that a substantial assistance agreement which contemplates a delay in the filing of charges does not constitute a delay attributable to the accused pursuant to Rule 3.191(j)(2) when it granted the Williams defendant discharge under the rule." PJB at 9.

Obviously, there can be no "direct and express" conflict if the Williams court "never specifically discussed" the rule of

criminal procedure that was determinative of the appellate court's opinion in the case at hand. If the Williams court did not expressly and directly consider the rule of criminal procedure exception, there can be no express and direct conflict of the decisions. There was no "direct and express" conflict between the result in lower court decision and Williams, and this Court should decline to exercise jurisdiction.

CONCLUSION

Based on the foregoing reason, the State respectfully requests this Honorable Court decline to exercise jurisdiction.

SIGNATURE OF ATTORNEY AND CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to Frederick M. Conrad, Esq., 908 Thomasville Road, Tallahassee, Florida 32303, by MAIL on January _____, 2004.

Respectfully submitted and served,

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the font requirements of Fla. R. App. P. 9.210.

_____
Robert Wheeler
Attorney for State of Florida

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APPENDIX

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