IN THE SUPREME COURT OF FLORIDA

CASE NO. 07-1210
Lower Tribunal No. 3D04-2042

STATE OF FLORIDA,

Petitioner,

vs.

DANNY ADAMS,

Respondent.

ON PETITION FOR DISCRETIONARY REVIEW

BRIEF OF PETITIONER ON JURISDICTION

BILL McCOLLUM
Attorney General

RICHARD L. POLIN
Florida Bar No. 0230987
Chief Assistant Attorney General
Office of the Attorney General
Department of Legal Affairs
444 Brickell Avenue, Suite 650
Miami, Florida 33131
(305) 377-5441
(305) 377-5655 (fax)

TABLE OF CONTENTS

TABLE OF CITATIONS

STATEMENT OF THE CASE AND FACTS

The facts pertaining to these proceedings, as set forth in the decision of the Third District Court of Appeal, below, are as follows:

In 1989, Danny Adams was charged with second degree murder. Competency proceedings were held, and an evaluation revealed that Adams suffered from organic brain damage and was functionally illiterate. App. 2.[1] Five years prior to the murder, Adams was diagnosed with schizophrenia. Id. Adams' IQ was 47 and there were memory defects and impairments. Id.

One year after the charge, the parties stipulated to Adams' competence and entered into a negotiated plea agreement, under which Adams pled no contest to second degree murder, in exchange for a sentence of 12 years in prison, with drug treatment, followed by 10 years probation. App. 3. A special condition of probation called for psychological evaluation upon release from prison, and, if required, follow-up treatment. Id. Additionally, Adams' "penal exposure, in the event of a 'technical violation of probation, would be capped at seventeen years in prison, with credit for the twelve years already served." Id.

[1] App., followed by a page number, refers to the Appendix to this Brief.

In 1996, upon release from prison, Adams violated probation by testing positive for using illegal drugs. App. 5. "This matter came up before a different judge, prosecutor and assistant public defender, none of whom were aware of his original plea agreement and its special conditions." Id. The court sentenced Adams to one year community control followed by ten years probation, with provisions for residential treatment, aftercare, outpatient treatment and random urine testing. Id.

Upon completion of the residential drug treatment program, Adams was charged with violating his community control by failing to remain confined to his approved residence. App. 6. Adams' community control permitted him to be out of the home on Saturdays to wash his clothes at a laundromat from 3:00 p.m. to 6:00 p.m. Id. When the community control officer arrived at his home at 6:21 p.m., Adams was not there. Id. Adams returned home 10 minutes later. Id.

At the revocation hearing, the community control officer testified that Adams had not been home and that his mother "claimed that he had returned from the Laundromat and had left again to visit his daughter." Id. Adams testified that the laundromat was crowded and, as a result, he did not get home until 6:30 p.m. and that he had called his mother to let her know that he would be late. Id.

Upon finding a violation of community control, Adams was sentenced to life in prison. App. 7. The trial court observed that this was Adams' second violation. The revocation and sentence were affirmed on direct appeal in 1998. Id.

In August 2003, Adams filed a pro se motion to correct illegal sentence under Rule 3.800(a), Florida Rules of Criminal Procedure, arguing that his life sentence for a technical violation of community control breached the original plea agreement, which contained a cap of 17 years. Id. The trial court concluded that the sentence did not breach the agreement because the cap applied only to a technical violation of the original sentence and did not pertain to the subsequent sentence imposed after the first violation of probation. App. 7-8.

Adams appealed the denial of his 3.800(a) motion. App. 8. The district court of appeal observed that the State was "technically correct" that "the 3.850 motion was time barred." App. 9.[2] While the State was "technically correct, "where as here, the court finds that a manifest injustice has occurred, it is the responsibility of that court to correct the injustice if it can." Id. Thus, the lower court found that the two year time bar for a 3.850 motion would not apply, as the court could treat

[2] The decision of the lower court, without express discussion, appears to have recognized that the claim asserted was beyond the scope of a 3.800(a) motion and then analyzed it as a 3.850 motion.

the motion as a habeas corpus petition, not subject to any limitations period, on the basis of a "manifest injustice." App. 9-10. The manifest injustice was that Adams was serving a life sentence in prison for returning home 30 minutes later than he was supposed to when one of his documented deficiencies was lack of temporal awareness. App. 9–10. The court granted a habeas corpus petition and reversed the sentencing order and remanded "with directions that the lower court resentence Danny for his community control violation, taking into account his deficits, and in accordance with his original plea agreement." App. 10.

SUMMARY OF ARGUMENT

The decision of the lower court expressly and directly conflicts with decisions of this Court and other district courts of appeal on the following issues: 1) Whether a sentence upon revocation of community control can be limited by the nature of the violation; 2) Whether the two-year time limitation for a 3.850 motion can be circumvented by treating the motion as a habeas corpus petition on grounds of manifest injustice. The latter issue is of the utmost importance, as no appellate court in Florida has previously held that the time limit for a 3.850 motion may be circumvented in that manner, and neither the district court of appeal, below, nor this Court, have ever defined manifest injustice for that purpose.

ARGUMENT

THE DECISION OF THE LOWER COURT EXPRESSLY AND DIRECTLY CONFLICTS WITH DECISIONS OF THIS COURT AND OTHER DISTRICT COURTS OF APPEAL.

The decision of the lower court, holding that a habeas corpus petition can be utilized to circumvent the limitations period for a 3.850 motion, expressly and directly conflicts with this Court's decision in Baker v. State, 878 So. 2d 1236 (Fla. 2004). In Baker, this Court addressed the language in Rule 3.850(h), Florida Rules of Criminal Procedure. That rule provides that "[a]n application for writ of habeas corpus . . . shall not be entertained . . . unless it also appears that the remedy by motion [e.850] is inadequate to test the legality of the applicant's detention."

Addressing that language, this Court held:

> The last clause of Rule 3.850(h) might suggest that it is permissible to file a petition for writ of habeas corpus to test the legality of a prisoner's criminal judgment rather than to seek relief through an appropriate postconviction motion. However, the courts of this state have correctly interpreted this provision to mean that "habeas corpus may not be used as a substitute for an appropriate motion seeking postconviction relief pursuant to the [rule]. *Harris v. State*, 789 So. 2d 1114, 1115 (Fla. 1st DCA 2001); *see also, Leichtman v. Singletary*, 674 So. 2d 889, 891 (Fla. 4th DCA 1996) ("The remedy of habeas corpus is not available as a substitute for postconviction relief under rule 3.850, Florida Rules of Criminal Procedure." . . .

> . Thus, it is clear that, with limited exceptions, habeas corpus relief is not available to obtain collateral postconviction relief because most claims can be raised by motion pursuant to Florida Rule of Criminal Procedure 3.850.

878 So. 2d at 1241. The only exception noted was for the filing of a trial court habeas corpus petition to seek a belated appeal. Id. at 1241, n. 6.

This Court noted that a Fourth District Court of Appeal decision might have come to a contrary conclusion in Sullivan v. State, 674 So. 2d 214, 215 at n. 1 (Fla. 4th DCA 1996), but "that such language was entirely dicta in that case and that the decision in *Sullivan* was later abrogated by our decision in *State v. Mancino*, 714 So.2 d 429 (Fla. 1998).

Thus, the lower court's decision is clearly contrary to this Court's decision in Baker and the decisions cited approvingly therein – Harris v. State, 789 So. 2d 1114, 1115 (Fla. 1st DCA 2001); Leichtman v. Singletary, 674 So. 2d 889, 891 (Fla. 4th DCA 1996) – regarding the utilization of a habeas corpus petition for the purpose of circumventing the requirements and limitations of Rule 3.850 that would otherwise apply.

The decision herein has major ramifications for the criminal justice system. First, it opens the door to potentially vast numbers of time-barred (or otherwise

procedurally barred) 3.850 motions, as those motions will now have to be addressed to determine whether there is a manifest injustice such as to enable the bar to be circumvented. Second, the decision, while finding a manifest injustice in the instant case, does not attempt to define manifest injustice, and that will likely result in extensive litigation in the future absent definition by this Court if such an exception exists.

Federal courts, interpreting comparable statutory language in 28 U.S.C. § 2255, which permits federal collateral review of federal convictions, have expressed doubt as to whether there is an exception to the limitations period, and have typically concluded that if such an exception existed, it would re an "actual innocence" exception, one which places an extremely high burden on the defendant. See, e.g., Weaver v. United States, 195 F. 3d 123 (2d Cir. 1999); Triestman v. United States, 124 F. 3d 361 (2d Cir. 1997). Thus, the instant decision would provide this Court with an opportunity to determine whether the exception exists, and, if so, what the definition of manifest injustice is.

Third, the decision herein will substantially affect federal habeas corpus review of state court convictions under 28 U.S.C. § 2254. Such proceedings require that claims be fully exhausted in state court prior to review in federal habeas corpus proceedings. Federal courts will typically require such

exhaustion, unless it is futile to pursue in state court, and, if futile, the claims will be procedurally barred in federal habeas. See, e.g., Bailey v. Nagle, 172 F. 3d 1299 (11th Cir. 1999). As a manifest injustice exception to 3.850 will mean that a statute of limitations bar will never exist with finality, since it will always be subject to an alleged claim of manifest injustice, federal habeas petitioners will have greater difficulty demonstrating that claims have been fully exhausted in state court, determinations of futility of further review in state court will be more difficult to make, and federal courts would likely induce state prisoners to seek even more postconviction remedies in state courts than they currently do. Simply put, finality will no longer exist in the state court system.

Fourth, if such a habeas corpus exception exists, and the general principle is that habeas corpus petitions are filed where custody exists, the lower court's opinion may very well be establishing the right to seek postconviction review by habeas corpus petition in a circuit court other than the one in which the conviction was rendered, simply by the assertion of a manifest injustice exception to 3.850 bars. Not only will circuit courts outside the one rendering the conviction acquire greater involvement, but they will be asked to conduct necessary

review as to such matters for which they lack the necessary trial court records.

Lastly, the lower court's decision conflicts with decisions which hold that when probation or community control have been violated, any sentence which could lawfully have been imposed at the outset can be imposed upon revocation. Ellis v. State, 406 So. 2d 76 (Fla. 1981). The lower court's opinion held that upon revocation, the trial court's sentence would have to be constrained and consider what the lower court perceived as a minimal violation of community control.

CONCLUSION

As the lower court's decision expressly and directly conflicts with this Court's decisions in Baker and Ellis, and district court of appeal decisions in Leichtman and Harris, and the decision herein has major consequences for postconviction practice, this Court should exercise its discretionary jurisdiction to review the lower court's decision.

Respectfully submitted,

BILL McCOLLUM
Attorney General

_____
RICHARD L. POLIN
Florida Bar No. 0230987
Chief Assistant Attorney General
444 Brickell Avenue, Suite 650
Miami, FL 33131
(305) 377-5441
(305) 377-5655 (fax)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Brief of Petitioner on Jurisdiction was mailed this ___ day of July, 2007 to VALERIE JONAS, Assistant Public Defender, and ROBERT KALTER, Assistant Public Defender, Office of the Public Defender, 1320 N.W. 14th Street, Miami, Florida 33125.

_____
RICHARD L. POLIN
Chief Assistant Attorney General

CERTIFICATE REGARDING FONT SIZE AND TYPE

The undersigned attorney hereby certifies that the foregoing Brief of Petitioner on Jurisdiction was typed in Courier New, 12-point type, in accordance with the Florida Rules of Appellate Procedure.

_____
RICHARD L. POLIN