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IN THE SUPREME COURT OF FLORIDA
CASE No. SC17-588
L.T. No. 3D15-1003

CHRISTINE CAREY,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

STATE OF FLORIDA'S BRIEF ON JURISDICTION

ON PETITION FOR DISCRETIONARY REVIEW
FROM THE THIRD DISTRICT COURT OF APPEAL

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TABLE OF CONTENTS

PAGE

TABLE OF CONTENTS……………………………………………........................i
TABLE OF CITATIONS…………………………………………….................ii
STATEMENT OF THE CASE AND FACTS……………………………..........1
SUMMARY OF THE ARGUMENT……………………………………………2
ARGUMENT……………………………………………………………….....2

I. THERE IS NO CONFLICT WITH "PRECEDENT PROHIBITING STATUTORY INTERPRETATION IF THE PLAIN LANGUAGE IS UNAMBIGUOUS"……………………………………………………2

II. THERE IS NO "CONFLICT[] WITH PRECEDENT HOLDING THAT MORE SPECIFIC STATUTES ARE EXCEPTIONS TO GENERAL STATUTES"……………………………………………………..6

III. THERE IS NO BASIS FOR REVIEW "TO AVOID A WASTE OF RESOURCES" ……………………………………………………….9

CONCLUSION ………………………………………………………………..10
CERTIFICATE OF SERVICE…………………………………………………11
CERTIFICATE OF COMPLIANCE WITH FONT REQUIREMENTS
……………………………………………………………………………….11

TABLE OF CITATIONS

Cases

Atwater v. Kortum,
95 So. 3d 85 (Fla. 2012) 4
Blue Cross & Blue Shield of Florida, Inc. v. Steck,
818 So. 2d 465 (Fla. 2002) 8
Brown v. City of Vero Beach,
64 So. 3d 172 (Fla. 4th DCA 2011)..5
Bruner v. GC-GW, Inc.,
880 So. 2d 1244 (Fla. 1st DCA 2004) 6
Cricket Props., LLC v. Nassau Pointe at Heritage Isles Homeowners Ass'n.,
124 So. 3d 302 (Fla. 2d DCA 2013)..9
Daniels v. Florida Dept. of Health,
898 So. 2d 61 (Fla. 2005) 5
Ellis v. Hunter,
3 So. 3d 373 (Fla. 5th DCA 2009)..5
Forsythe v. Longboat Key Beach Erosion Control Dist.,
604 So. 2d 452 (Fla. 1992) 8
Gallagher v. Manatee County,
927 So. 2d 914 (Fla. 2d DCA 2006)..5
Holly v. Auld,
450 So. 2d 217 (Fla. 1984) 5
Kincaid v. World Ins. Co.,
157 So. 2d 517 (Fla. 1963) 7
Kyle v. Kyle,
139 So. 2d 885 (Fla. 1962) 7
Mancini v. State,
312 So. 2d 732 (Fla. 1975) 3
Matheson v. State,
500 So. 2d 1341 (Fla. 1987) 10
McCray v. State,
200 So. 3d 1296 (Fla. 2d DCA 2016)..3

McDonald v. State,
957 So. 2d 605 (Fla. 2007) 8
Mosher v. State,
876 So. 2d 1230 (Fla. 1st DCA 2004) 4
Reaves v. State,
485 So. 2d 829 (Fla. 1986) 7
State v. Benninghoff,
188 So. 3d 64 (Fla. 4th DCA 2016) 3
State v. Carey,
212 So. 3d 448 (Fla. 3d DCA 2017) 1, 2, 10
State v. Vickery,
961 So. 2d 309 (Fla. 2007) 2
Transp. Cas. Ins. Co. v. All Am. Air Freight, Inc.,
925 So. 2d 396 (Fla. 4th DCA 2006) 9
Walt Disney World Co. v. Goode,
520 So. 2d 270 (Fla. 1988) 6
Zold v. Zold,
911 So.2d 1222 (Fla.2005) 8

Statutes

Fla. Const. Art. V, § 3(b)(3) 10
Fla. Stat. § 916.145 ....3, 4
section 380.276(6), Florida Statutes (2007) 5
Section 916.17(3) 4

Rules

Florida Rule of Appellate Procedure 9.210(a)(2) 11

STATEMENT OF THE CASE AND FACTS

In the opinion on review, the District Court of Appeal (DCA) summarized:

> . . . . [Ms. Carey] is an elderly woman who suffers from advancing dementia which is irreversible. The charges against her stem from an aggravated battery on a pregnant woman.
> Over a period of three years, [she] has been evaluated by a number of experts all of whom agree she will never be restored to competency . . . . [she] was conditionally released in 2013 to her family which continues to care for her and to do everything possible to protect others from her.
> Essentially concluding that [Ms. Carey's] physical condition, as well as her mental status, makes [her] no threat to the public and that continued court supervision would be futile and a waste of judicial resources, the court below terminated further court ordered supervision or care and then *dismissed the criminal action* against her.

State v. Carey, 212 So. 3d 448, 449 (Fla. 3d DCA 2017) (e.s.). The DCA reversed the trial court's dismissal of the case, stating:

> Both Rule 3.213(a)(1) and section 916.145(1)(n), leave no doubt that the court below, while free to terminate supervised follow up care, was not authorized to dismiss the charges pending against [Ms. Carey] as fewer than five years had elapsed between the time [she] was adjudicated incompetent and the dismissal order.
> . . . . [W]e . . . reject [Ms. Carey]'s argument that section 916.17 of the Florida Statutes conferred discretion on the court below to dismiss the charges against [her] in less than five years. That provision, authorizes conditional release in lieu of involuntary commitment either before an adjudication of guilt or after an acquittal on a finding of not guilty by reason of insanity. Section 916.17 expressly authorizes release in either circumstance when predicated on a court approved treatment plan encompassing, among other things, periodic follow up reports to the court regarding a defendant's compliance and treatment progress

Carey, 212 So. 3d at 450. The DCA denied rehearing, rejecting: a claim of conflict; a claim the case should be affirmed on mootness grounds; and certification of a question of great public importance. Thus, the opinion quoted above is the basis for a jurisdictional claim in this Court. Ms. Carey contends it creates conflict jurisdiction for further review of the DCA's conclusion.

SUMMARY OF THE ARGUMENT

There is no direct or express conflict. None of the cited cases conflicts with the face of the *Carey* opinion. The opinion is consistent with all the other District Courts of Appeal that have decided this question. Further, the *Carey* opinion does not conflict with any opinion of this Court; the cases Ms. Carey cites relate to general propositions of law, not decisions applying a rule of law to substantially the same facts. This Court should deny jurisdiction.

ARGUMENT

I. There is no conflict with "precedent prohibiting statutory interpretation if the plain language is unambiguous"

When conflict is the basis, "jurisdiction to review the case depends on whether the decision actually expressly and directly conflicts with the decision of another court." *State v. Vickery*, 961 So. 2d 309, 312 (Fla. 2007). This requires either "(1) the announcement of a rule of law which conflicts with a rule previously announced by this court or another district, or (2) the application of a

rule of law to produce a different result in a case which involves *substantially the same facts* as a prior case." *Mancini v. State*, 312 So. 2d 732, 733 (Fla. 1975) (emphasis added). There is no conflict jurisdiction in this case.

A. There is no case defining "the cause" under this statute from which to create express and direct conflict.

Ms. Carey cites no case asserting that "the cause" unambiguously means "the case" or "the charges" in this statute. Consequently, there can be no express and direct conflict for this court to resolve.

Further, every DCA case deciding this issue – whether the statute permits dismissal of the charges (and thus the case) before the period in the statute for dismissal (here, five years) – reached the same conclusion. *See McCray v. State*, 200 So. 3d 1296, 1297 (Fla. 2d DCA 2016) (agreeing that denial of dismissal of the charges was proper because "few than five years have elapsed since the original determination that Mr. McCray was incompetent to proceed due to mental illness" and citing Fla. Stat. § 916.145); *State v. Benninghoff*, 188 So. 3d 64, 67 (Fla. 4th DCA 2016) (stating "here less than four years had elapsed before the trial court dismissed the charge against the defendant."); *see also Bryant v. State*, 99 So. 3d 612, 613 (Fla. 5th DCA 2012) ("the trial court's order correctly denied the motion to dismiss as to Count I, the felony, because it has not been five years since Bryant was declared incompetent" even though, as here, there was a determination

in the trial court that incompetence was unlikely to be removed during the five years); *accord Mosher v. State*, 876 So. 2d 1230, 1232 (Fla. 1st DCA 2004)(stating "[b]ecause the five-year period of time has not yet passed, we find no error in the trial court's ruling that the charges against Mosher should not yet be dismissed ", and applying Section 916.145).

Here, the unambiguous phrase is "dismiss the cause", which does not call for dismissing "the charge" (since those are different words) and does not call for dismissing "the case" (since Section 916.17(3) includes the language of "discharge the defendant" in the same sentence as "court supervised follow-up care").

B. The cases regarding statutory interpretation do not create conflict.

None of the cases Ms. Carey cites announce a conflicting "rule of law" with the *Carey* opinion, and none of them involve an application of the rule she cites here ("no occasion for resorting to the rules of statutory construction") to substantially the same facts as this case. Consequently, there is no conflict.

The cases from this Court she cites do not provide conflict jurisdiction. The *Atwater v. Kortum*, 95 So. 3d 85, 91 (Fla. 2012) opinion addressed whether a statute unconstitutionally regulated commercial speech. In *Daniels*, "the question before this Court [was] whether [Daniels was] included within the **statutory definition** of a "small business party" and this Court concluded "Section

57.111(3)(d)(1)(a) defines a small business party as an entity that is a sole proprietor of an unincorporated business" and thus "Daniels d[id] not fit this definition because she practices under South Beach Maternity, a subchapter-S corporation," and "she is not included within section 57.111(3)(d)(1)(b) because the agency filed a complaint against her as an individual." *Daniels v. Florida Dept. of Health*, 898 So. 2d 61, 66 (Fla. 2005). [1]

Similarly, the DCA cases Ms. Carey cites are not a basis for express and direct conflict, since they also involve general propositions of law (and canons of construction), along with facts that are not substantially identical to ours. *See Brown v. City of Vero Beach*, 64 So. 3d 172, 174, 177 (Fla. 4th DCA 2011) (stating "[t]his appeal concerns whether section 380.276(6), Florida Statutes (2007), creates a limitation on the liability of local governments for death and injuries resulting from rip currents" and concluding dismissal of the complaint was proper because the statute was "a limited waiver of governmental sovereign immunity for municipalities."); *Ellis v. Hunter*, 3 So. 3d 373, 378 (Fla. 5th DCA 2009) (noting "a strong presumption in favor of the validity of legislative enactments" and construing the language of a statute to find it constitutional); *Gallagher v. Manatee*

[1] The *Holly v. Auld*, 450 So. 2d 217, 221 (Fla. 1984) case, cited in *Atwater*, involved "the discovery privilege provided in section 768.40(4)."

County, 927 So. 2d 914, 917 (Fla. 2d DCA 2006)(interpreting a cap on recovery in certain cases and applying the plain meaning rule to conclude that "*Recovery* and its cognate *recover* are broad and comprehensive terms" and "[t]here is nothing in the meaning of *recovery* which suggests that some elements of an award are not part of the recovery which is subject to the cap on liability."); *Bruner v. GC-GW, Inc.*, 880 So. 2d 1244, 1247 (Fla. 1st DCA 2004)(concluding that a provision of the workers' compensation statute protecting against retialatory discharge applied even though the retaliation was alleged for filing a claim as to a previous employer, because "to read the statute in such a way, especially given the language, 'no employer,' would be to add restrictive language to the statute").

If the "alleged conflict cases are distinguishable" from the Petitioner's case, jurisdiction does not exist. *See Walt Disney World Co. v. Goode*, 520 So. 2d 270 (Fla. 1988). Here, the other District Courts of Appeal addressing *this issue* are consistent with the DCA opinion on review, and thus, there is no conflict.

II. There is no "conflict[] with precedent holding that more specific statutes are exceptions to more general statutes"

Ms. Carey's second claim of conflict jurisdiction asserts that the DCA misapplied a cannon of statutory construction. But she cites no case with analogous facts (necessary for conflict where the rule of law's application is the trigger) or a case from this Court applying a conflicting rule of law. Rather, she

asserts the DCA got it wrong. That is not conflict; it is further review of outcome, which is not a basis for jurisdiction in this Court. As this Court has explained:

> . . . . The test of our jurisdiction in such situations **is not measured simply by our view regarding the correctness of the Court of Appeal decision**. On the contrary, 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. We have said that conflict must be such that if the later decision and the earlier decision were rendered by the same Court the former would have the effect of overruling the latter . . . . If the two cases are distinguishable in controlling factual elements or if the points of law settled by the two cases are not the same, then no conflict can arise . . .

Kyle v. Kyle, 139 So. 2d 885, 887 (Fla. 1962) (e.s., internal citations omitted).

"The constitutional standard is whether the decision of the District Court *on its face* collides with a prior decision of this Court or another District Court on the same point of law." *Kincaid v. World Ins. Co.*, 157 So. 2d 517, 517 (Fla. 1963). "Conflict between decisions must be express and direct, i.e., it must appear within the four corners of the majority decision" and "the record itself can[not] be used to establish jurisdiction." *Reaves v. State*, 485 So. 2d 829, 830 (Fla. 1986). This Court cannot "explore the factual situation beyond that narrated in the opinion of the District Court." *Kincaid*, 157 So. 2d at 517.

The cases Ms. Carey cites do not create conflict jurisdiction, even if they involve statutory interpretation; similar subject matter is not enough to create

conflict jurisdiction. *See Blue Cross & Blue Shield of Florida, Inc. v. Steck*, 818 So. 2d 465, 465 (Fla. 2002) (noting that just because "cases concern the applicability of an intoxication exclusion in an insurance policy" the Court would not take jurisdiction, and noting the differences in the cases).

For example, *McDonald v. State*, 957 So. 2d 605, 610 (Fla. 2007), involved sentencing statutes, and this Court noted "[a]s we have stated, 'the doctrine of *in pari materia* requires that statutes relating to the same subject or object be construed together to harmonize the statutes and to give effect to the Legislature's intent.'" (quoting *Zold v. Zold,* 911 So.2d 1222, 1229–30 (Fla.2005)). Thus, it does not create conflict with this case; the *McDonald* court reconciled two provisions, as the DCA did here. Further, consistent with the premise in *Forsythe v. Longboat Key Beach Erosion Control Dist.*, 604 So. 2d 452, 455 (Fla. 1992) that "all parts of a statute must be read *together* in order to achieve a consistent whole," the DCA here concluded that the dismissal provision of 916.145 related to the charges (given the use of that specific word) and that the "discharge" provision of Section 916.17(3) related to "court supervised follow-up care," since the word was found in a sentence with that phrase and gave effect to the provisions together. Even assuming this was error, it is not conflict; the DCA applied the rule of law to different facts.

The DCA cases Ms. Carey cites also do not show express and direct conflict. In *Cricket Properties*, the Second District court addressed *two statutes* (a lien statute and the tax deed statue), and noted that "[t]wo facially conflicting statutes can therefore be harmonized where one statute addresses the precise factual setting under consideration." *Cricket Props., LLC v. Nassau Pointe at Heritage Isles Homeowners Ass'n.*, 124 So. 3d 302, 307 (Fla. 2d DCA 2013). There is no conflict, since the DCA here addressed a single statute, and further, addressed the harmonious operation of two provisions of that statute (the incompetency to proceed to trial statute and its provision regarding court-supervised follow up care after charges are filed). Likewise, *Transp. Cas. Ins. Co. v. All Am. Air Freight, Inc.*, 925 So. 2d 396, 397 (Fla. 4th DCA 2006), involved motor vehicle statues, and concluded "[t]he problem with the insurer's position is that section 627.7281 is of general application to all motor vehicles, while section 320.02(5)(e) applies more specifically to commercial vehicles, which are subject to special registration requirements with the state." That does not create express and direct conflict, since here the DCA addressed the interaction of provisions of the same statute (916.17 and 916.145), and unlike the DCA here, the *All American Air Freight* court did not address the definitional issue here (the use of "cause" rather than "charges").

III. There is no basis for review "to avoid a waste of resources".

Under the Florida Constitution, this 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." Fla. Const. Art. V, § 3(b)(3).

Ms. Carey asserts this Court should take jurisdiction, and review the trial court's dismissal a second time, because this case "has dragged on" and "there is nothing more for the trial court to decide." She contends the DCA opinion "renders section 916.17(3) ineffective," even though, as the DCA noted, the trial court was "authorized to 'discharge' [Ms. Carey] from her responsibility to further comply with the obligation to report to the court under her conditional release plan, and to 'terminate its jurisdiction' to enforce that plan", thus eliminating the plan that was indisputably not working in Ms. Carey's case. *Carey*, 212 So. 3d at 451. Section 916.17 operated here; and further, the DCA's interpretation of its operation does not conflict with this Court or any other DCA. Because there is no conflict, this Court should deny the petition. *See, e.g.*, *Matheson v. State*, 500 So. 2d 1341, 1342 (Fla. 1987) (stating "it is clear that there is no express and direct conflict between the opinion under review and the cases [cited]").

CONCLUSION

Ms. Carey has not met her burden to invoke this Court's jurisdiction. This Court should not accept jurisdiction.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing State of Florida's Brief on Jurisdiction was mailed to this 5th day of June, 2017 to John Eddy Morrison (JMorrison@PDMiami.com and AppellateDefender@PDMiami.com), Counsel for Petitioner.

/s/ Jeffrey R. Geldens
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CERTIFICATE OF COMPLIANCE WITH FONT REQUIREMENTS

I HEREBY CERTIFY that this Answer Brief was typed using Times New Roman 14 point font and complies with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

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