

RECEIVED, 9/26/2014 15:54:22, John A. Tomasino, Clerk, Supreme Court

IN THE SUPREME COURT OF FLORIDA

DALVIN DENSON,	:	
Petitioner,	:	
VS.	:	CASE NO: SC14-1834
	:	(1D12-5794)
STATE OF FLORIDA,	:	
Respondent.	:	
<hr/>	:	

ON DISCRETIONARY REVIEW OF THE DECISION
OF THE FIRST DISTRICT COURT OF APPEAL

JURISDICTIONAL BRIEF OF PETITIONER

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TABLE OF CONTENTS

TABLE OF CONTENTS	i
TABLE OF CITATIONS	ii
STATEMENT OF THE CASE AND FACTS	1
SUMMARY OF ARGUMENT	2
ARGUMENT	3
THE COURT SHOULD ACCEPT THIS CASE TO PROMOTE UNIFORMITY OF DECISIONS	
CONCLUSION	5
CERTIFICATE OF SERVICE	5
CERTIFICATE OF FONT SIZE	6

TABLE OF CITATIONS

CASES

PAGE(S)

<u>Denson v. State</u> , 143 So.3d 1198 (no. 1D12-5794) Fla. 1 st DCA August 18, 2014).....	1
<u>Fleming v. State</u> , 135 So.3d 531 (Fla. 1 st DCA 2014).....	3,4
<u>The Florida Star v. B.J.F.</u> , 530 So.2d 286 (Fla. 1988) ...	3
<u>Jollie v. State</u> , 405 So.2d 418 (Fla. 1981).....	2,3
<u>Morgan v. State</u> , 137 So.3d 1075 (Fla. 3d DCA 2014).....	3,4
<u>Walton v. State</u> , 106 So.3d 522 (Fla. 1st DCA 2013).....	passim
<u>Williams v. State</u> , 125 So.3d 879, 880 Fla. 4th DCA 2013).....	passim

CONSTITUTION

Article V, § 3(b)(3), Florida Constitution.....	2
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RULES

Rule 9.030(a)(2)(A)(iv), Florida Rules of Appellate Procedure.....	2
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JURISDICTIONAL BRIEF OF PETITIONER

I STATEMENT OF THE CASE AND FACTS

This is an appeal from the decision of the First District Court of Appeal. Denson v. State, 143 So.3d 1198 (no. 1D12-5794) (Fla. 1st DCA August 18, 2014).

The district court affirmed consecutive 10/20/life mandatory minimum sentences on attempted murder and armed robbery, citing inter alia Williams v. State, 125 So.3d 879, 880 (Fla. 4th DCA 2013), review granted, no. SC13-1080 (Fla. July 16, 2013) (oral argument held June 4, 2014) and Walton v. State, 106 So.3d 522 (Fla. 1st DCA 2013) (*en banc*; *conflict certified*), review granted, no. SC13-1652 (Fla. Apr. 3, 2014) (oral argument scheduled for November 6, 2014). Williams and Walton are pending review in this court.

II SUMMARY OF THE ARGUMENT

Under Jollie v State, infra, the citation by the district court to a case pending a decision in this court creates conflict jurisdiction under article V, § 3(b)(3), Florida Constitution and Rule 9.030(a)(2)(A)(iv), Florida Rules of Appellate Procedure. Because this court has accepted Williams and Walton, supra, for review, it should also accept this case for review, in order to promote uniformity of decisions and to serve the interests of justice.

III ARGUMENT

ISSUE PRESENTED

THE COURT SHOULD ACCEPT THIS CASE TO PROMOTE
UNIFORMITY OF DECISIONS.

Petitioner, Dalvin Denson, was convicted at jury trial of two counts of attempted first-degree murder with a firearm and one count of armed robbery with a firearm. The First District Court affirmed, citing Williams and Walton, supra, which are pending review in this court. See also Morgan v. State, 137 So.3d 1075 (Fla. 3d DCA 2014) (*conflict certified*), stayed pending disposition of Walton, no. SC14-757 (May 13, 2014); Fleming v. State, 135 So.3d 531 (Fla. 1st DCA 2014), stayed pending disposition of Walton no. SC14-883 (May 12, 2014).

While the district court issued a written opinion in this case and not a "PCA cite," the grounds for review - that the cases cited are pending review in this court - are the same as in the Jollie situation.

In Jollie v. State, 405 So.2d 418 (Fla. 1981), this court recognized that a PCA cite, where the cited case is pending review in this court, creates a type of discretionary conflict jurisdiction. Jollie recognized that a conflict existed, even where the district court did nothing more than per curiam affirm with a citation, as long as the cited case was pending in this court. See also The Florida Star v. B.J.F., 530 So.2d 286, 288, n.3 (Fla. 1988), in which this court said:

there can be no actual conflict discernible in an
opinion containing only a citation to other case law
unless one of the cases cited as controlling authori-

ty is pending before this Court, or has been reversed on appeal or review, or receded from by this Court, or unless the citation explicitly notes a contrary holding of another district court or of this Court. See Jollie v. State, 405 So.2d 418, 420 (Fla. 1981). (emphasis added)

The corollary is that, when a case cited in the district court as controlling authority is pending before this court, this court has conflict jurisdiction.

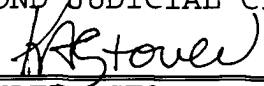
Williams and Walton are pending review in this court, as are Fleming and Morgan, supra. Thus, this court has jurisdiction. Because the district court has held the instant case involves the same issue as Williams and Walton, and Williams and Walton are pending review in this court, petitioner requests that this court review his case to promote uniformity of decisions.

IV CONCLUSION

Based upon the foregoing argument, reasoning, and citation of authority, petitioner requests that this Court exercise its discretion to accept jurisdiction of this case and order briefing on the merits.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by electronic mail, by agreement of the parties, to Jennifer J. Moore, Office of the Attorney General, at crimapptlh@myfloridalegal.com, and by U.S. mail to Mr. Dalvin Denson, inmate no. J48624, Jackson Correctional Institution, 5563 10th Street, Malone, FL 32445-3144, this day, September 26, 2014.

CERTIFICATION OF FONT AND TYPE SIZE

This brief is typed in Courier New 12.



KATHLEEN STOVER