

IN THE SUPREME COURT OF FLORIDA

DEMARQUARIUS DEONTE TRUITT,

Petitioner,

v.

Case No. SC14-1937

STATE OF FLORIDA,

Respondent.

RESPONSE TO ORDER TO SHOW CAUSE

The State responds to this Court's October 14, 2015 order to show cause. The order directed the State to show:

[W]hy in light of State v. Shelley, 40 Fla. L. Weekly S362 (Fla. June 25, 2015), this Court should not exercise jurisdiction in this case, summarily quash the decision being reviewed, and remand this case with an instruction that the conviction and sentence for the lesser included offense be vacated.

This Court approved the Second District's decision Shelley and disproved the First District's decision in Murphy v. State. Shelley at \*1.

There this Court held that

Based on the plain language of section 847.0135, we hold that the Legislature has not explicitly stated its intent to authorize separate convictions and punishments for conduct that constitutes both solicitation under subsection (3)(b) and traveling after solicitation under subsection (4)(b). Moreover, because the statutory elements of solicitation are entirely subsumed by the statutory elements of traveling after solicitation, the offenses are the same for purposes of the *Blockburger* same-elements test codified in section 775.021(4), Florida Statutes. [citations omitted].

Id. at \*4.

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The State must agree that Shelley controls as to the specific facts of this case. Petitioner was charged and convicted of one count of Traveling to meet a Minor to do Unlawful Acts, one count of Use 2 Way Communication Device to Facilitate a felony and one count of Soliciting a Child via Computer Service to Engage in Sexual Conduct. The trial court sentenced Petitioner to 364 days years in the Alachua County Department of Corrections with 364 days credit for time served and 5 years of sex offender probation on Counts I & III, and 10 years of sex offender probation on Count II. Pursuant to this Court's holding in Shelley, the solicitation is subsumed into the Traveling to Meet a Minor count. Petitioner's "new" judgment would show convictions for one count of Traveling to Meet a Minor, and one count of Use of 2 Way Communication Device. Thus, the State cannot show cause why this court should not decline to exercise jurisdiction and instruct the First District Court of Appeal to vacate the conviction and sentence as to Count I- solicitation of a Child For Unlawful Sexual Conduct using Computer Services.

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to the following by Electronic Mail on December 4, 2015: M.J. Lord, Assistant Public Defender at mj.lord@flpd2.com.

CERTIFICATE OF COMPLIANCE

I certify that this brief was computer generated using Courier New 12 point font.

Respectfully submitted and certified,  
PAMELA JO BONDI  
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