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IN THE SUPREME COURT OF THE STATE OF FLORIDA

DARRYL LEWIS DAVIS,

Petitioner,

v.

CASE NO.: SC16-1738
5th DCA No. 5D15-2507

STATE OF FLORIDA,

Respondent.
_____/

ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

JURISDICTIONAL BRIEF OF RESPONDENT

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STATEMENT OF CASE AND FACTS

The only facts relevant to this Court in determining whether to accept jurisdiction are those contained within the opinion of the District Court.[1] Respondent, therefore, offers the following as a substitute for Petitioner's statement of the case and facts. The Fifth District Court of Appeal's (Fifth District) opinion in Davis v. State, 197 So. 3d 615 (Fla. 5th DCA 2016), set out the following:

> Darryl Lewis Davis petitions this court for writ of habeas corpus regarding his convictions and life sentences in two cases. Davis was charged in both cases with robbery with a firearm. Neither the informations nor the evidence presented in Davis's trials alleged that he used any weapon other than a firearm. Separate juries found Davis guilty of robbery with a deadly weapon but made special findings that he did not possess a firearm during the commission of the crimes.
>
> We hold that it was error to list robbery with a deadly weapon as a lesser-included offense on the verdict forms in these cases. See Growden v. State, 372 So. 2d 930, 931 (Fla. 1979); Stephens v. State, 396 So. 2d 741, 742 (Fla. 5th DCA 1981); Deleon v. State, 66 So. 3d 391, 394-95 (Fla. 2d DCA 2011). Furthermore, the verdicts and special findings were inconsistent. See Starling v. State, 152 So. 3d 868, 868 (Fla. 1st DCA 2014); Nettles v. State, 112 So. 3d 782, 783 (Fla. 1st DCA 2013). Failure to correct Davis's convictions, which resulted in consecutive life sentences, would constitute a manifest injustice.

[1] Reaves v. State, 485 So. 2d 829, 830 (Fla. 1986).

Accordingly, we grant Davis's petitions for writ of habeas corpus and remand for entry of corrected judgments that adjudicate him guilty of robbery with a weapon and resentencing according to a revised Criminal Punishment Code scoresheet.

SUMMARY OF THE ARGUMENT

This Court should decline to accept jurisdiction in the instant case. The Court is limited to the facts contained within the four corners of the decision in determining whether an express and direct conflict exists. On the face of the decision under review, there is no express and direct conflict with any decision of this Court or any district court.

ARGUMENT

THIS COURT SHOULD DECLINE TO EXERCISE ITS DISCRETIONARY JURISDICTION IN THIS CASE, AS THE FIFTH DISTRICT'S OPINION DOES NOT EXPRESSLY AND DIRECTLY CONFLICT WITH A DECISION OF THIS COURT OR ANOTHER DISTRICT COURT.

Petitioner seeks discretionary review with this Honorable Court under Article V, Section 3(b)(3) of the Florida Constitution. *See also* Fla. R. App. P. 9.030(a)(2)(A)(iv). Article V, Section 3(b)(3) provides that the Florida Supreme Court may review a district court of appeal decision only if it "expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law." In Reaves v. State, 485 So. 2d 829, 830 (Fla. 1986), this Court explained: "[c]onflict between decisions must be express and direct, i.e., it must appear within the four corners of the majority decision. Neither a dissenting opinion nor the record itself can be used to establish jurisdiction." Reaves, 485 So. 2d at 830, n.3. Additionally, this Court has held that inherent or so-called "implied" conflict may not serve as a basis for this Court's jurisdiction. DHRS v. National Adoption Counseling Service, Inc., 498 So. 2d 888, 889 (Fla. 1986).

Petitioner has failed to establish that the Fifth District's opinion in Davis v. State, 197 So. 3d 615 (Fla. 5th DCA 2016), expressly and directly conflicts with any case of this Court or a district court. In fact, Petitioner had filed two petitions for writ of habeas corpus in the Fifth District and that court granted relief based upon the cases cited as conflict now by Petitioner. In other words, Petitioner was the prevailing party in the Fifth District and was granted the relief he requested. There is no conflict, and jurisdiction should be denied.

CONCLUSION

Based on the arguments and authorities presented herein, Respondent respectfully requests this Honorable Court decline to accept jurisdiction in this case.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Jurisdictional Brief of Respondent has been delivered via U.S. Mail to pro se Petitioner Darryl L. Davis, DC# X20295, Franklin Correctional Institution, 1760 Highway 67 North, Carrabelle, FL 32322-2157, this 10th day of November 2016.

DESIGNATION OF EMAIL

I HEREBY DESIGNATE the following email addresses for purposes of service of all documents, pursuant to Rule 2.516, in this proceeding: crimappdab@myfloridalegal.com (primary) and Wesley.Heidt@myfloridalegal.com (secondary).

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief was typed in 12-point Courier New as required by Rule 9.210(a)(2).

Respectfully submitted,

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COUNSEL FOR RESPONDENT

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

DARRYL LEWIS DAVIS,

Petitioner,

v. Case No. 5D15-2507

STATE OF FLORIDA,

Respondent.

_____/

Opinion filed July 15, 2016

Petition for Writ of Habeas Corpus, A Case of Original Jurisdiction.

Darryl Lewis Davis, Carrabelle, pro se.

Pamela Jo Bondi, Attorney General, Tallahassee, and Rebecca Rock McGuigan, Assistant Attorney General, Daytona Beach, for Respondent.

PER CURIAM.

Darryl Lewis Davis petitions this court for writ of habeas corpus regarding his convictions and life sentences in two cases. Davis was charged in both cases with robbery with a firearm. Neither the informations nor the evidence presented in Davis's trials alleged that he used any weapon other than a firearm. Separate juries found Davis

guilty of robbery with a deadly weapon but made special findings that he did not possess a firearm during the commission of the crimes.

We hold that it was error to list robbery with a deadly weapon as a lesser-included offense on the verdict forms in these cases. See Growden v. State, 372 So. 2d 930, 931 (Fla. 1979); Stephens v. State, 396 So. 2d 741, 742 (Fla. 5th DCA 1981); Deleon v. State, 66 So. 3d 391, 394-95 (Fla. 2d DCA 2011). Furthermore, the verdicts and special findings were inconsistent. See Starling v. State, 152 So. 3d 868, 868 (Fla. 1st DCA 2014); Nettles v. State, 112 So. 3d 782, 783 (Fla. 1st DCA 2013). Failure to correct Davis's convictions, which resulted in consecutive life sentences, would constitute a manifest injustice.

Accordingly, we grant Davis's petitions for writ of habeas corpus and remand for entry of corrected judgments that adjudicate him guilty of robbery with a weapon and resentencing according to a revised Criminal Punishment Code scoresheet.

PETITIONS GRANTED.

SAWAYA, ORFINGER and EDWARDS, JJ., concur.