

IN THE SUPREME COURT OF FLORIDA

KADEEM QUAISHAWN HART,

Petitioner,

v.

Case No. SC16-464

STATE OF FLORIDA,

First DCA Nos. 1D13-1754
1D13-1810

Respondent.

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

JURISDICTIONAL BRIEF OF PETITIONER

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PRELIMINARY STATEMENT

Petitioner seeks review of the decision in Hart v. State, ___ So. 3d ___ (Fla. 1st DCA Feb. 19, 2016) ("Hart II") (attached). Petitioner was the Appellant and the Respondent was the Appellee in the proceedings in the First District Court of Appeal. The parties will be referred to as they appear before this Court.

STATEMENT OF THE CASE AND FACTS

In First District Court of Appeal case number 1D13-1754, Petitioner pled guilty to sexual battery and kidnaping. In First District Court of Appeal case number 1D13-1810, Petitioner pled guilty to unarmed carjacking. At the time of the offenses in 2007, Petitioner was 15 years old. In case number 1D13-1754, the court imposed 30-year concurrent prison sentences on each count. In case number 1D13-1810, the court imposed a 20-year prison sentence to run consecutively to the 30-year sentences in the other case.

On direct appeal, Petitioner argued that his total 50-year sentence violated Graham v. Florida, 130 S. Ct. 2011 (2010). The First District per curiam affirmed Petitioner's sentences, citing, *inter alia*, Gridine v. State, 89 So. 3d 909, 910-11 (Fla. 1st DCA 2011), review granted, 103 So. 3d 139 (Fla. 2012), and Henry v. State, 82 So. 3d 1084, 1089 (Fla. 5th DCA), review granted, 107 So. 3d 405 (Fla. 2012). Hart v. State, 133 So. 3d

1245 (Fla. 1st DCA 2014).

Petitioner filed a notice to invoke this Court's jurisdiction. On January 20, 2016, the Court accepted review, quashed the First District's opinion and remanded for reconsideration in light of the decisions in Henry v. State, 175 So. 3d 675 (Fla. 2015), and Gridine v. State, 175 So. 3d 672 (Fla. 2015).

On remand, the First District again affirmed Petitioner's sentence, citing Kelsey v. State, 40 Fla. L. Weekly D1291 (Fla. 1st DCA May 29 2015), *rev. granted*, No. SC15-2079 (Fla. Nov. 19, 2015). Hart II. Petitioner timely filed notice of his intent to invoke this Court's discretionary jurisdiction.

SUMMARY OF ARGUMENT

Under Article V, §3(b)(3), Florida Constitution, this Court has jurisdiction and the discretion to exercise that jurisdiction to review the First District's decision in Hart II, where the First District per curiam affirmed Petitioner's sentences and cited to a case in which this Court has accepted jurisdiction. Jollie v. State, 405 So. 2d 418 (Fla. 1982).

ARGUMENT

THIS COURT SHOULD ACCEPT JURISDICTION OF THE FIRST DISTRICT'S DECISION IN HART UNDER THE PRINCIPLE OF JOLLIE V. STATE, 405 SO. 2D 418 (FLA. 1982).

This Court has jurisdiction to review the First District's decision in Hart II under Article V, §3(b)(3) of the Florida Constitution. In Hart II, the First District issued a per curiam affirmance of Petitioner's sentences, citing Kelsey v. State, 40 Fla. L. Weekly D1291 (Fla. 1st DCA May 29 2015), *rev. granted*, No. SC15-2079 (Fla. Nov. 19, 2015). Hart II.

In his direct appeal, Petitioner argued that his aggregate 50-year prison sentence violated Graham v. Florida, 130 S. Ct. 2011 (2010). In Kelsey, the First District held that the juvenile defendant was not entitled to a resentencing under the new juvenile sentencing statute, section 775.082(3)(c), Fla. Stat. (2015). The Kelsey parties have begun briefing in this Court.

Petitioner's case presents the same issue the Court is considering in Kelsey. Based upon the First District's citation to that case, in which this Court has accepted jurisdiction and granted review, the Court has discretion to exercise jurisdiction in Petitioner's case. Jollie v. State, 405 So. 2d 418 (Fla. 1982).

CONCLUSION

Petitioner requests the Court to accept this case for discretionary review and order briefing on the merits.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Jurisdictional Brief of Petitioner was furnished to **Jennifer J. Moore**, Assistant Attorney General, at Jennifer.Moore@myfloridalegal.com, and by U.S. Mail to **Mr. Kadeem Quaishawn Hart**, DOC# J38758, Charlotte Correctional Institution, 33123 Oil Well Road, Punta Gorda, FL 33955-9701, on this 16th day of March, 2016.

CERTIFICATE OF FONT AND TYPE SIZE

I hereby certify that this brief was typed using Courier New, 12 point.

Respectfully submitted,

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STATE OF FLORIDA,

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Respondent.

_____ /

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

APPENDIX TO JURISDICTIONAL BRIEF OF PETITIONER

APPENDIX

DOCUMENT

A

1st District Court of Appeals Opinion of
Kadeem Quaishawn Hart, 1D13-1754 & 1D13-1810

APPENDIX A

KADEEM QUAISHAWN HART,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

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

CASE NOS. 1D13-1754 & 1D13-1810

Opinion filed February 19, 2016.

An appeal from the Circuit Court for Duval County.
Charles W. Arnold, Judge.

Nancy A. Daniels, Public Defender, and Gail E. Anderson, Assistant Public
Defender, Tallahassee, for Appellant.

Pamela Jo Bondi, Attorney General, and Jennifer J. Moore, Assistant Attorney
General, Tallahassee, for Appellee.

PER CURIAM.

AFFIRMED. See Kelsey v. State, 40 Fla. L. Weekly D1291, —So.3d —
—, 2015 WL 3447138 (Fla. 1st DCA May 29, 2015) (On Motion for Rehearing),
rev. granted, No. SC15–2079, 2015 WL 7720518 (Fla. Nov. 19, 2015).

ROBERTS, CJ, and ROWE and KELSEY, JJ., CONCUR.