IN THE SUPREME COURT OF FLORIDA
TALLAHASSEE, FLORIDA

TRIAL PRACTICES, INC.,

Petitioner,

CASE NO.: SC17-2058

vs.

HAHN LOESER & PARKS, LLP, as Substitute Party for Jack J. Antaramian,

L.T. CASE NO.: 2D13-6051
Consolidated with:
L.T. CASE NO.: 2D14-86
L.T. CASE NO.: 06-CA-5366

Respondent.
_____/

PETITIONER'S NOTICE OF SUPPLEMENTAL AUTHORITY

Petitioner, Trial Practices, Inc. ("TPI"), pursuant to Rule 9.225, Fla. R. App. P., submits as supplemental authority Rule 9.120(d), Fla. R. App. P. entitled "Briefs on Jurisdiction." This supplemental authority is pertinent to pages 6 and 7 of "Respondent's Answer Brief on Jurisdiction" wherein the Respondent makes argument on the Second District's certification to this Court of a question of great public importance, while Fla. R. App. P. 9.120(d) specifies no briefs on jurisdiction are allowed for such questions.

TPI also submits as supplemental authority Rules 9.210 (b) (3) and 9.210 (c), Fla. R. App. P. regarding references to the appropriate pages of the record and *Reaves v. State*, 485 So 2d 829, n. 3 (Fla. 1986). The supplemental authority is pertinent to pages 1 and 2 of the Respondent's Answer Brief on

Jurisdiction wherein the Respondent makes unsubstantiated fact statements and arguments in a restatement of the case and facts and without citation to the Appendix, which is the entire record for jurisdictional briefing. Fla. R. App. P. 9.120(d).

The supplemental authority is attached to this Notice as required by Fla. R. App. P. 9.225.

Dated: January 2, 2018.

Respectfully Submitted,

By: /s/ *G. Donovan Conwell, Jr.*

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of January 2018, a true and correct copy of the above and foregoing has been filed via the Florida Court's E-Filing Portal which will send an Electronic Mail notification of same to the following:

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Court Commentary

2003 Amendment. Subdivision (*l*) was deleted to reflect the holding in *North Florida Women's Health & Counseling Services, Inc. v. State*, 28 Fla. L. Weekly S549 [866 So. 2d 612] (Fla. July 10, 2003).

RULE 9.120. DISCRETIONARY PROCEEDINGS TO REVIEW DECISIONS OF DISTRICT COURTS OF APPEAL

(a) Applicability. This rule applies to those proceedings that invoke the discretionary jurisdiction of the supreme court described in rule 9.030(a)(2)(A).

(b) Commencement. The jurisdiction of the supreme court described in rule 9.030(a)(2)(A) shall be invoked by filing a notice, accompanied by any filing fees prescribed by law, with the clerk of the district court of appeal within 30 days of rendition of the order to be reviewed.

(c) Notice. The notice shall be substantially in the form prescribed by rule 9.900. The caption shall contain the name of the lower tribunal, the name and designation of at least 1 party on each side, and the case number in the lower tribunal. The notice shall contain the date of rendition of the order to be reviewed and the basis for invoking the jurisdiction of the court.

(d) Briefs on Jurisdiction. Petitioner's brief, limited solely to the issue of the supreme court's jurisdiction and accompanied by an appendix containing only a conformed copy of the decision of the district court of appeal, shall be served within 10 days of filing the notice. Respondent's brief on jurisdiction shall be served within 20 days after service of petitioner's brief. Formal requirements for both briefs are specified in rule 9.210. No reply brief shall be permitted. If jurisdiction is invoked under rule 9.030(a)(2)(A)(v) (certifications of questions of great public importance by the district courts to the supreme court), no briefs on jurisdiction shall be filed.

West's Florida Statutes Annotated
Florida Rules of Appellate Procedure (Refs & Annos)

Fla.R.App.P. Rule 9.210

Rule 9.210. Briefs

Currentness

(a) Generally. In addition to briefs on jurisdiction under rule 9.120(d), the only briefs permitted to be filed by the parties in any one proceeding are the initial brief, the answer brief, a reply brief, and a cross-reply brief. All briefs required by these rules shall be prepared as follows:

(1) When not filed in electronic format, briefs shall be printed, typewritten, or duplicated on opaque, white, unglossed paper. The dimensions of each page of a brief, regardless of format, shall be 8 ½ by 11 inches.

(2) The lettering in briefs shall be black and in distinct type, double-spaced, with margins no less than 1 inch. Lettering in script or type made in imitation of handwriting shall not be permitted. Footnotes and quotations may be single spaced and shall be in the same size type, with the same spacing between characters, as the text in the body of the brief. Headings and subheadings shall be at least as large as the brief's text and may be single-spaced. Computer-generated briefs shall be filed in either Times New Roman 14-point font or Courier New 12-point font. All computer-generated briefs shall contain a certificate of compliance signed by counsel, or the party if unrepresented, certifying that the brief complies with the font requirements of this rule. The certificate of compliance shall be contained in the brief immediately following the certificate of service.

(3) Briefs filed in paper format shall not be stapled or bound.

(4) The cover sheet of each brief shall state the name of the court, the style of the cause, including the case number if assigned, the lower tribunal, the party on whose behalf the brief is filed, the type of brief, and the name and address of the attorney filing the brief.

(5) The page limits for briefs shall be as follows:

(A) Briefs on jurisdiction shall not exceed 10 pages.

(B) Except as provided in subdivisions (a)(5)(C) and (a)(5)(D) of this rule, the initial and answer briefs shall not exceed 50 pages and the reply brief shall not exceed 15 pages. If a cross-appeal is filed, the appellee's answer/cross-initial brief shall not exceed 85 pages, and the appellant's reply/cross-answer brief shall not exceed 50 pages, not more than 15 of which shall be devoted to argument replying to the answer portion of the appellee's answer/cross-initial brief. Cross-reply briefs shall not exceed 15 pages.

(C) In an appeal from a judgment of conviction imposing a sentence of death or from an order ruling after an evidentiary hearing on an initial postconviction motion filed under Florida Rule of Criminal Procedure 3.851, the initial and answer briefs shall not exceed 100 pages and the reply brief shall not exceed 35 pages. If a cross-appeal is filed, the appellee's answer/cross-initial brief shall not exceed 150 pages, and the appellant's reply/cross-answer brief shall not exceed 100 pages, not more than 35 of which shall be devoted to argument replying to the answer portion of the appellee's answer/cross-initial brief. Cross-reply briefs shall not exceed 35 pages.

(D) In an appeal from an order summarily denying an initial postconviction motion filed under Florida Rule of Criminal Procedure 3.851, a ruling on a successive postconviction motion filed under Florida Rule of Criminal Procedure 3.851, a finding that a defendant is intellectually disabled as a bar to execution under Florida Rule of Criminal Procedure 3.203, or a ruling on a motion for postconviction DNA testing filed under Florida Rule of Criminal Procedure 3.853, the initial and answer briefs shall not exceed 75 pages. Reply briefs shall not exceed 25 pages.

(E) The cover sheet, the tables of contents and citations, the certificates of service and compliance, and the signature block for the brief's author shall be excluded from the page limits in subdivisions (a)(5)(A)-(a)(5)(D). All pages not excluded from the computation shall be consecutively numbered. The court may permit longer briefs.

(b) Contents of Initial Brief. The initial brief shall contain the following, in order:

(1) A table of contents listing the sections of the brief, including headings and subheadings that identify the issues presented for review, with references to the pages on which each appears.

(2) A table of citations with cases listed alphabetically, statutes and other authorities, and the pages of the brief on which each citation appears. See rule 9.800 for a uniform citation system.

(3) A statement of the case and of the facts, which shall include the nature of the case, the course of the proceedings, and the disposition in the lower tribunal. References to the appropriate pages of the record or transcript shall be made.

(4) A summary of argument, suitably paragraphed, condensing succinctly, accurately, and clearly the argument actually made in the body of the brief. It should not be a mere repetition of the headings under which the argument is arranged. It should seldom exceed 2 and never 5 pages.

(5) Argument with regard to each issue, with citation to appropriate authorities, and including the applicable appellate standard of review.

(6) A conclusion, of not more than 1 page, setting forth the precise relief sought.

(7) A certificate of service.

(8) A certificate of compliance for computer-generated briefs.

(c) Contents of Answer Brief. The answer brief shall be prepared in the same manner as the initial brief, provided that the statement of the case and of the facts may be omitted, if the corresponding section of the initial brief is deemed satisfactory. If a cross-appeal has been filed, the answer brief shall include the issues in the cross-appeal that are presented for review, and argument in support of those issues.

(d) Contents of Reply Brief. The reply brief shall contain argument in response and rebuttal to argument presented in the answer brief. A table of contents, a table of citations, a certificate of service, and, for computer-generated briefs, a certificate of compliance shall be included in the same manner as in the initial brief.

(e) Contents of Cross-Reply Brief. The cross-reply brief is limited to rebuttal of argument of the cross-appellee. A table of contents, a table of citations, a certificate of service, and, for computer-generated briefs, a certificate of compliance shall be included in the same manner as in the initial brief.

(f) Times for Service of Briefs. The times for serving jurisdiction and initial briefs are prescribed by rules 9.110, 9.120, 9.130, and 9.140. Unless otherwise required, the answer brief shall be served within 20 days after service of the initial brief; the reply brief, if any, shall be served within 20 days after service of the answer brief; and the cross-reply brief, if any, shall be served within 20 days thereafter.

(g) Citations. Counsel are requested to use the uniform citation system prescribed by rule 9.800.

Credits

Amended Nov. 26, 1980, effective Jan. 1, 1981 (391 So.2d 203); Sept. 13, 1984, effective Jan. 1, 1985 (463 So.2d 1114); Oct. 22, 1992, effective Jan. 1, 1993 (609 So.2d 516); Nov. 22, 1996, effective Jan. 1, 1997 (685 So.2d 773); Oct. 12, 2000, effective Jan. 1, 2001 (780 So.2d 834); Oct. 26, 2006, effective Jan. 1, 2007 (941 So.2d 352); Nov. 13, 2008, effective Jan. 1, 2009 (2 So.3d 89); Oct. 18, 2012, effective Dec. 1, 2012, April 1, 2013, Oct. 1, 2013 (102 So.3d 451); Nov. 6, 2014, effective Jan. 1, 2015 (183 So.3d 245); March 12, 2015, effective March 12, 2015 (160 So.3d 62); Aug. 27, 2015, effective Aug. 27, 2015 (173 So.3d 951); Aug. 27, 2015, effective Oct. 1, 2015 (173 So.3d 953); Nov. 12, 2015, effective Jan. 5, 2016 (177 So.3d 1254).

Editors' Notes

COMMITTEE NOTES

1977 Amendment. This rule essentially retains the substance of former rule 3.7. Under subdivision (a) only 4 briefs on the merits are permitted to be filed in any 1 proceeding: an initial brief by the appellant or petitioner, an answer brief by the appellee or respondent, a reply brief by the appellant or petitioner, and a cross-reply brief by the appellee or respondent (if a cross-appeal or petition has been filed). A limit of 50 pages has been placed on the length of the initial and answer briefs, 15 pages for reply and cross-reply briefs (unless a cross-appeal or petition has been filed), and 20 pages for jurisdictional briefs, exclusive of the table of contents and citations of authorities. Although the court may by order permit briefs longer than allowed by this rule, the advisory committee contemplates that extensions in length will not be readily granted by the courts under these rules. General experience has been that even briefs within the limits of the rule are usually excessively long.

Subdivisions (b), (c), (d), and (e) set forth the format for briefs and retain the substance of former rules 3.7(f), (g), and (h). Particular note must be taken of the requirement that the statement of the case and facts include

485 So.2d 829
Supreme Court of Florida.

James REAVES, Petitioner,
v.
STATE of Florida, Respondent.

No. 66436.
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April 3, 1986.

Defendant was convicted in the Circuit Court, Dade County, Murray Goldman, J., of murder. Defendant appealed. The District Court of Appeal, 458 So.2d 53, Daniel S. Pearson, J., affirmed. On application for review on ground of direct conflict of decision, the Supreme Court held that in order to find conflict between decision of District Court of Appeal and *Nowlin*, it would be necessary for Supreme Court either to accept dissenter's view of evidence, that defendant's statements were in fact involuntary, and could not be used in impeachment, or to review record itself in order to resolve disagreement in favor of dissenter, and neither course of action was available under Court's jurisdiction.

Petition denied.

Adkins, J., concurred in the result only.

West Headnotes (2)

[1] Courts
Review by or Certificate to Supreme Court by Court of Civil Appeals of Questions Where Its Decision Conflicts with or Overrules That of Another Court of Civil Appeals or That of the Supreme Court

Only facts relevant to Supreme Court's decision to accept or reject petitions for review of decision of District Court of Appeal on ground of direct conflict of decision, are those facts contained within four corners of majority decision; neither dissenting opinion nor record itself may be used to establish jurisdiction. West's F.S.A. Const. Art. 5, § 3(b)(3).

12 Cases that cite this headnote

[2] Courts
Review by or Certificate to Supreme Court by Court of Civil Appeals of Questions Where Its Decision Conflicts with or Overrules That of Another Court of Civil Appeals or That of the Supreme Court

In order to find conflict between decision of District Court of Appeal and *Nowlin*, it would be necessary for Supreme Court either to accept dissenter's view of evidence, that defendant's statements were in fact involuntary, and could not be used in impeachment, or to review record itself in order to resolve disagreement in favor of dissenter, and neither course of action was available under jurisdiction granted by article V, § 3(b)(3) of Florida Constitution, governing Supreme Court review of conflicts between decisions of District Court's appeal. West's F.S.A. Const. Art. 5, § 3(b)(3).

10 Cases that cite this headnote

Attorneys and Law Firms

***829** James H. Greason, Sp. Asst. Public Defender, Ft. Lauderdale, for petitioner.

Jim Smith, Atty. Gen. and Richard E. Doran, Asst. Atty. Gen., Miami, for respondent.

Opinion

PER CURIAM.

We accepted jurisdiction of *Reaves v. State,* 458 So.2d 53 (Fla.3d DCA 1984), based on asserted conflict with *Nowlin v. State,* 346 So.2d 1020 (Fla.1977). Art. V, § 3(b)(3), Fla. Const. On closer examination, it is clear that there is no direct and express conflict and that review was improvidentially granted.

***830** The facts of the case are drawn from the district court opinion below. When first arrested following a lethal stabbing, petitioner received and invoked his

Miranda [1] right to remain silent. When approached by a second officer shortly thereafter, petitioner agreed to talk and made several inculpatory admissions. Thereafter, petitioner received additional *Miranda* warnings enroute to and upon arrival at the police station and made another statement after the latter (fourth) *Miranda* warning. The trial court suppressed the statements as involuntary and the state was not permitted to use them in its case-in-chief. However, at trial, petitioner took the stand and testified contrary to the admissions he had made to the second police officer. Upon motion of the state, the trial court ruled that its earlier use of "involuntary" in suppressing the statements had been inadvertent and that the statements had been suppressed because the police had violated *Miranda* by persisting in their questioning after petitioner invoked his *Miranda* rights. Accordingly, the state was permitted to use the suppressed admissions to the second police officer to impeach petitioner's trial testimony. [2] The district court reviewed the record, recited the facts it found pertinent, and held that the admissions were voluntary, even though suppressible under *Miranda* from use in the case-in-chief, and that the trial court did not err in permitting their use in impeachment. *Oregon v. Hass,* 420 U.S. 714, 95 S.Ct. 1215, 43 L.Ed.2d 570 (1975); *Harris v. New York,* 401 U.S. 222, 91 S.Ct. 643, 28 L.Ed.2d 1 (1971); *Walder v. United States,* 347 U.S. 62, 74 S.Ct. 354, 98 L.Ed. 503 (1974).

[1] **[2]** The district court decision correctly states and applies the law based on the facts given. [3] However, in dissent, Judge Hendry canvassed the record and concluded, contrary to the majority, that the statements were in fact involuntary and could not be used in impeachment. Petitioner is asking that we find conflict with *Nowlin.* In order to do so, it would be necessary for us either to accept the dissenter's view of the evidence and his conclusion that the statements were involuntary, or to review the record itself in order to resolve the disagreement in favor of the dissenter. Neither course of action is available under the jurisdiction granted by article V, section 3(b)(3) of the Florida Constitution. Conflict 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. See *Jenkins v. State,* 385 So.2d 1356 (Fla.1980), where we examined at length the effect of the 1980 constitutional amendment on our conflict jurisdiction. Having determined that there is no direct and express conflict, we deny the petition for review.

It is so ordered.

BOYD, C.J., and OVERTON, McDONALD, EHRLICH and SHAW, JJ., concur.

ADKINS, J., concurs in result only.

All Citations

485 So.2d 829, 11 Fla. L. Weekly 150

Footnotes

1 *Miranda v. Arizona,* 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

2 Petitioner claimed defense of others and testified at trial that he stabbed the victim in order to prevent him from harming a third person. This was contrary to his admission that he killed decedent in a fit of anger.

3 This case illustrates a common error made in preparing jurisdictional briefs based on alleged decisional conflict. The only facts relevant to our decision to accept or reject such petitions are those facts contained within the four corners of the decisions allegedly in conflict. As we explain in the text above, we are not permitted to base our conflict jurisdiction on a review of the record or on facts recited only in dissenting opinions. Thus, it is pointless and misleading to include a comprehensive recitation of facts not appearing in the decision below, with citations to the record, as petitioner provided here. Similarly, voluminous appendices are normally not relevant.