

RECEIVED 12/07/2017 FLORIDA SUPREME COURT

RECEIVED

DEC 07 2017

IN THE SUPREME COURT
STATE OF FLORIDA

DISTRICT COURT OF APPEAL
FIFTH DISTRICT

PROVIDED TO TOMOKA CLON FOR MAILING BY  11/22/17

GORDON TAD CARTWRIGHT,

Petitioner,

2011-CF-2042
2011-CF-2073
2012-CF-3307

Case No.:

District Court Case No.: 5D17-2371

V.
CLERK, SUPREME COURT.
BY _____

FILED
JOHN A. TOMASINO
DEC - 7 2017

STATE OF FLORIDA,

Respondent.

PETITION FOR WRIT OF CERTIORARI

COMES NOW, the Petitioner Gordon Tad Cartwright, pro se who hereby files this Petition for WRIT OF CERTIORARI, pursuant to the provisions of Fla.R.App.P 9.100.

In support of the forgoing *Certification Request* Petitioner does state the following:

JURISDICTION

I. The Fifth District Court of Appeals at: 300 S. Beach Street in Daytona Beach, Florida issued its P.C.A on the 29 day of August, 2017. (Attached).

II. Petitioners Timely MOTION FOR REHEARING was Denied on the 13 day of September, 2017 (Attached).

III. Article V, section 4(b)(3) of the Florida Constitution provides that this court has Jurisdiction to issue a Writ of Certiorari. SEE ALSO: Fla.R.App.P. 9.030(b)(2)(a). The order to be reviewed in this case was rendered on the 29 day of Oct, 2017, making this Petition Timely as required by Rule 9.100(c)(1).

IV. Further, this Court has jurisdiction to review the order as it presents a *matter of law*. Petitioners P.C.A ruling from the Fifth District Court of Appeals conflicts with the opinions rendered by other Districts as it relates to said issue.

V. Under these Review Standards this Petition for Review should be granted. Article V, section 4(b)(1) of the Florida Constitution and Section 440.271 Florida Statutes. SEE ALSO: Fla.R.App.P. 9.030(1)(c) and 9.180(b)(1)(a).

ISSUE PRESENTED

The Petitioner seeks review of a P.C.A. ruling Denying Petitioners Rule 3.850 Motion for Post-conviction Relief.

- I. The Issue was: FUNDAMENTAL ERROR IN THE FORM OF DUAL-CONVICTIONS WAS THWARTED UPON DEFENDANT IN THE FORM OF MULTI-STACKING OF DRUG TRAFFICING CHARGES, A DIRECT VIOLATION OF STATE AND FEDERAL MANDATES.

Alternatively, the question presented is: Does the FIFTH District Court of Appeals P.C.A Ruling conflict with Case Law? Is it Fundamental in nature to be convicted of dual convictions?

OPINIONS IN SUPPORT

FEDERAL CASE LAW

Blocksburger

Pizzo v. US. 469 U.S 277

Agan v. Duggar 853 f.2d 1337 (11th Cir. 1987)

Harris v. Reed 489 U.S 255 (89)

Coleman v. Thomas 15 S.Ct. 2546 (1981)

STATE CASE LAW

State v. Burnette, 881 So.2d 693 (1st DCA 2004)

Fla.R.Crim.P. 3.922(a).

Florida Statues, 755.082(2)(d) and 812.15

Williams v. State, 726 So.2d 422 (Fla 1992)

Gorham v. State, 968 So.2d 717 (4th DCA 2007)

Schulterbrant v. State, 984 So.2d 542 (FLA 2008)

Johnson v. State, 133 So.3d 602 (4th DCA 2009)

Hungkicke v. State, 881 So.2d 166 (FLA 2010)

State v. Madlin, 273 So.2d 394 (FLA 1973)

Overton v. State, 976 So.2d 536 (FLA 2007)

Huff v. State, 569 So.2d 1247 (FLA 1990)

Wilcher v. State, 787 So.2d 150 (4th DCA 2001)

Rivera v. State, 29 So.3d 1139 (FLA 2009)

Duvor v. State, 905 So.2d 42 (FLA 2002)

Thomas v. State, 72 So.2d 626 (1st DCA 2009)

White v. State, 16 So.3d 1004 (FLA 2009)

Reynolds v. State, 17 So.3d 796 (FLA 2010)

Campbell v. State, 458 So.2d 239

Wagner v. State, 458 So.2d 38 (4th DCA 1997)

King v. State, 557 So.2d 899 (5th DCA 1990)

Young v. State, 699 So.2d 624 (FLA 1997)

ARGUMENT

The decision in the case at bar rendered by the FIFTH District conflicts with the decision(s) in the *First, Second, Third, and Fourth* District Court of Appeals. In support of this *certification for review*, Petitioner shows:

I. Citing its earliest decision in State v. Madlin, 273 So.2d 394 (FLA 1973) the court Vacated judgment due to the unconstitutional dual (stacking) convictions.

2. Florida Statues 755.082(2)(d) and 812.15 clearly forbids stacking offences when it involves same elements of offences. For by doing so is dual convictions and renders double jeopardy issues. Pizzo v. US, 469 us 277, Blockburger, Williams v. State 726 so.2d 422 (FLA 1992)

3. The Fourth District went on to further elaborate in Gorham v. State, 968 So.2d 717 (4th DCA 2007), that “where there are multi offences, dual convictions for drug trafficking charges cannot stand under the *constitutional prohibition against dual convictions*.” In support of Gorham, Petitioner presented exhibits (score sheets) that explicitly shows the stacking offences of drug trafficking charges.

4. In the case at bar, *dual convictions* can[not] stand, for the adjudication arose out of a *constitutionally barred conviction*, as the offences, as outlined in case law, are subsumed by each other. Schulterbrant v. State 984 so.2d 542 (FLA 2008), Johnson v. State 133 so.3d 602 (4th DCA 2009), Pizzo v. US. 276 3d 122. Wherefore adjudication must be vacated pursuant to the provisions of law. For as outlined in Blockburger, a defendant can[not] be prejudged in the form of dual convictions, by doing so violates one’s constitutional guaranteed protection against such adjudications. Crimes arising out of and subsuming one another is barred. Hungkicke v. State 881 soss.2d 166 (FLA 2010).

5. Hence, this Court should exercise de nova standard of review, in examining Petitioners claims of: *dual convictions* and the question in which Petitioner presents, as the foresaid malicious actions were done breaching rule 3.140(s). In State v. Madlin, 273 So.2d 394 (FLA 1973), this Court stated, “When a defendant is found guilty by way of defective information due to the unconstitutional stacking offenses the adjudication is void.” Actions taken by the State in violating rule 3.140 has been deemed to be fundamental error, for it affects the defendant’s substantial due process rights

6. The courts adjudication [must] be vacated, for it is an abuse of discretion, malicious, and severely prejudicial. Overton v. State 976 so.2d 536 (FLA 2007). The *Fifth District Court* abused its discretion in allowing fundamental error to be thwarted upon Petitioner in “affirming” the use of stacking offences that led to dual convictions. The judicial action is arbitrary, fanciful, and most unreasonable. Huff v. State 569 so.2d 1247 (FLA 1990). And as shown in the case at bar there is a severe case of prejudice. Green v. State 728 so.2d 779 (4th DCA 1999), Hutchenson v. State,

7. In Wilcher v. State, 787 So.2d 150 (4th DCA 2001), the court set the standard of review in the determination of dual convictions and the rendition of double jeopardy. And perhaps it was due to the simplicity of Petitioners case that the *Fifth District* over looked.

8. Petitioner’s information included a type of possession (constructive) which led to dual convictions. Rivera v. State, 29 So.3d 1139 (FLA 2009), which is a type of error that reaches down into the validity of the case to the extent that the adjudication received *could not* have been reached without the assistance of the error. Duvor v. State, 905 So.2d 42 (FLA 2002). The result of the error was fundamental, for charges were added and dual convictions were obtained. Stuart v. State, 420 So.2d 862 (FLA 1982). The misleading information as outlined in *Stuart* is defective in nature for adding multi trafficking, does not merely clarify as rule 3.140 permits. Montgomery v. State, 951 so.2d 1153 (FLA 2007). The information presented in the case at bar) equates to manifest injustice.

When courts are presented with the issue of *dual convictions* they continuously vacate as it is deemed most harmful. Thomas v. State, 72 So.2d 626 (1st DCA 2009), White v. State, 16 So.3d 1004 (FLA 2009).

9. In the case at bar the court failed to nolo prosqui to that of the stacking offences and caused a gross-miscarriage of justice. For the *Fifth district court* to knowingly allow the usage, bias, prejudice, predilections, and predispositions causes Petitioner to seek *certiorari*. Reynolds v. State 17 so.3d 796 (FLA 2010). When the record, as in the case at bar, discloses circumstances of biasness, acts to safe guard a defendant must transpire. To allow a defendant to be disposed to dual convictions by way of defective information is most prejudicial. Campbell v. State, 458 So.2d 239 (4th DCA1997).

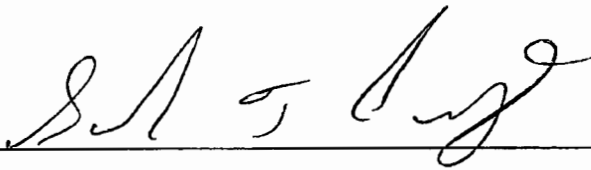
Fla.R.Crim.P 3.600 (1), along with the *Fourth* district court in Wagner v. State, 458 So.2d 38 lists grounds if prejudice is shown, and misconduct in the form of dual convictions is listed as most prejudicial. Hence, the Petitioner's sentence was illegally enhanced. F.S. 775.084 (3)(b), states in pertinent part, as clarified in King v. State, 557 S0.2d 899 (5th DCA 1990), "in upholding such enhancements, one's equal protection to due process must not be violated. The state may not merely file defective information that may suggest a sentence be enhances," Young v. State, 699 So.2d 624 (FLA 1997). The violation of such fundamental rights is adverse and requires resentencing. Whereas, when the state files defective information to allow dual convictions it is most detrimental to one's judicial process. A defendant must be sentenced to the guidelines.

10. Although the decision in the present case conflicts with the decisions of the *First, Second, Third, and Fourth* Districts, the *Fifth* district court *did not certify conflict in the present case*. Thus the issue of State Law to be certified to the Florida Supreme Court is whether it is constitutional to allow Dual convictions and allow the stacking of Drug Trafficking charges.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the forgoing Petition for certiorari was furnished to the Attorney General,

maslca by U.S. mail this 28 day of NOV 2017.

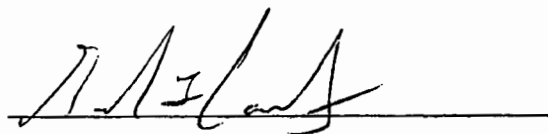


GORDON TAD CARTWRIGHT

CONCLUSION

Therefore, the Petitioner respectfully moves this court for an order certifying that the decision in the present case conflicts with the decisions in Districts 1, 2, 3, and 4.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Gordon Tad Cartwright", is written over a solid horizontal line.

GORDON TAD CARTWRIGHT

Tomoka CI

3950 Tiger Bay Rd

Daytona Beach, FL 32124

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

GORDON T. CARTWRIGHT,

Appellant,

v.

Case No. 5D17-2371

STATE OF FLORIDA,

Appellee.

_____ /

Decision filed August 29, 2017

3.850 Appeal from the Circuit Court
for Osceola County,
Jon B. Morgan, Judge.

Gordon T. Cartwright, Daytona Beach,
pro se.

Pamela Jo Bondi, Attorney General,
Tallahassee, and Robin A. Compton,
Assistant Attorney General, Daytona
Beach, for Appellee.

PER CURIAM.

AFFIRMED.

BERGER, LAMBERT and EDWARDS, JJ., concur.

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

GORDON T. CARTWRIGHT,

Appellant,

v.

CASE NO. 5D17-2371

STATE OF FLORIDA,

Appellee.

_____ /

DATE: October 04, 2017

BY ORDER OF THE COURT:

ORDERED that Appellant's Motion for Rehearing, filed September 13, 2017, is denied.

*I hereby certify that the foregoing is
(a true copy of) the original Court order.*


JOANNE P. SIMMONS, CLERK



Panel: Judges Berger, Lambert, and Edwards

cc:

Office of Attorney General

Robin A Compton

Gordon T. Cartwright

5DCA CERTIFICATION

I hereby certify that the foregoing is a true and correct copy of the instrument(s) filed in this office.

Witness my hand and official seal this December 7, 2017.

Joanne P. Simmons, Clerk of the Fifth District Court of Appeal.



By: /s/ Kathy Palmere



JAY P. COHEN
CHIEF JUDGE

THOMAS D. SAWAYA
WILLIAM D. PALMER
RICHARD B. ORFINGER
VINCENT G. TORPY, JR
KERRY I. EVANDER
WENDY W. BERGER
F. RAND WALLIS
BRIAN D. LAMBERT
JAMES A. EDWARDS
ERIC J. EISNAUGLE
JUDGES

JOANNE P. SIMMONS
CLERK

CHARLES R. CRAWFORD
MARSHAL

DISTRICT COURT OF APPEAL
FIFTH DISTRICT
300 SOUTH BEACH STREET
DAYTONA BEACH, FLORIDA 32114
(386) 947-1500 COURT
(386) 255-8600 CLERK

December 7, 2017

Hon. John A. Tomasino, Clerk
Supreme Court of Florida
500 South Duval Street
Tallahassee, Florida 32399-1927

Re: Cartwright
v.
State

Appeal No. 5D17-2371
Trial Court No: CF11-2042
Trial Court Judge: HON. JON B. MORGAN

Dear Hon. Tomasino:

Attached is a certified copy of the Notice invoking the discretionary jurisdiction of the Supreme Court pursuant to Rule 9.120, Florida Rules of Appellate Procedure, along with a copy of this Court's opinion or decision relevant to this case.

- The filing fee prescribed by Section 25.241(3), Florida Statutes, was received by this court and will be forwarded.
- The filing fee prescribed by Section 25.241(3), Florida Statutes, was not received by this Court.
- Petitioner/Appellant has been previously determined insolvent by this Circuit Court or our court.

No filing fee is required because:

- Summary Appeal (Rule 9.141)
- Unemployment Appeals Commission
- Habeas Corpus
- Juvenile case
- Other _____

Sincerely,
JOANNE P. SIMMONS, CLERK

By: /s/ Kathy Palmere
Deputy Clerk

Attachments

cc: Gordon Tad Cartwright Office of the Attorney General