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IN THE SUPREME COURT OF FLORIDA

ERIC DESMOND PARRISH,

Petitioner,

vs.

CASE NO. SC22-1457
DCA NO. 1D21-1435
LT NO. 20-CF-134

STATE OF FLORIDA,

Respondent.

_____/

ON DISCRETIONARY REVIEW
FROM THE FIRST DISTRICT COURT OF APPEAL

INITIAL BRIEF OF PETITIONER

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Preliminary Statement

Petitioner, Mr. Parrish, was the defendant in the trial court and will be referred to by his proper name. Respondent, the State of Florida, was the prosecution below, and will be referred to herein as the State.

References to the district court record on appeal will be by citation to "R," followed by the appropriate volume and page number. References to the supplemental record on appeal will be made by citation to "SR," followed by the appropriate volume and page number. References to the trial transcript will be by citation to "T" followed by the appropriate volume and page number. References to the certified copies of appeal papers volume will be by citation to "AP," followed by the page number.

Statement of the Case and Facts

Mr. Parrish was charged with, went to trial for, and was convicted of sexual battery, battery, and false imprisonment when he was a juvenile. (R-10, 142) The charges arose out of an incident involving his foster mother. (T-132)

Counsel raised two valid statutory grounds for a downward departure at the sentencing hearing: youthful offender, under § 921.0026(2)(*l*), Fla. Stat. (2020), and that Mr. Parrish had a mental disorder unrelated to substance abuse and is amenable to treatment under § 921.0026(2)(d), Fla. Stat. (2020). (R-198, 205)

The trial court denied the requests for a downward departure, concluding: "I do not-- despite whether he would qualify as a downward departure or not, I don't believe this is a case where it's appropriate for a downward departure at all. It's not even a close question for me." (R-212) The trial court sentenced Mr. Parrish to 30 years for sexual battery, five years concurrent for false imprisonment, and time served for battery. (R-142, 212)

Mr. Parrish raised two arguments on appeal. First, he argued that the trial court erred in not granting a judicial review after 20 years under § 921.1402, Florida Statutes (2020). (AP-41) Second,

pertinent here, was that the trial court erred in declining to grant a downward departure. (AP-45) The First DCA issued a written opinion, on which rehearing was denied. *Parrish v. State*, 349 So. 3d 485 (Fla. 1st DCA 2022).

With respect to the first argument, the First DCA agreed that Mr. Parrish was entitled to a judicial review after 20 years as a matter of law but affirmed, concluding that the trial court "had no affirmative duty under section 921.1402 to notify Mr. Parrish at sentencing of his eligibility for judicial review." *Id.* at 487. The motion for rehearing only concerned this argument. (AP-117)

The First DCA dismissed the appeal as to the second argument, at issue here, because it had previously held that it lacked authority to review a sentencing court's decision not to grant a downward departure in *Wilson v. State*, 306 So. 3d 1267, 1273 (Fla. 1st DCA 2020), *review granted*, SC20-1870, 2021 WL 1157838 (Fla. Mar. 26, 2021), which it cited without further discussion. *Parrish*, 349 So. 3d at 487.

Mr. Parrish filed a timely notice to invoke this Court's discretionary jurisdiction based on the citation to *Wilson*, pursuant to *Jollie v. State*, 305 So. 2d 218 (Fla. 1981), and this Court stayed

proceedings shortly thereafter pending disposition of *Clark v. State*, SC21-824, which, at the time, was the lead case on this issue.[1]

On June 1, 2023, this Court lifted the stay and ordered Mr. Parrish to file an initial brief on jurisdiction. Mr. Parrish did so, the State filed a jurisdictional answer brief, and this Court accepted jurisdiction. This initial brief follows.

[1] *Clark* was later voluntarily dismissed and the lead case changed.

Summary of the Argument

The only issue here is whether a district court of appeal (DCA) has jurisdiction to review a trial court's decision not to grant a downward departure sentence.

In *Banks v. State*, 732 So. 2d 1065, 1067-68 (Fla. 1999), this Court articulated a two-part test for appellate review of a trial court's decision to impose a downward departure: (1) whether it can (i.e. if there is a valid legal basis to do so and competent evidence supports that basis) and, if so, (2) whether it should. The second, at issue here, is within the trial court's discretion and will not be reversed absent an abuse of discretion. *Id.* at 1068.

For over two decades, DCAs faithfully applied *Banks* and reviewed trial court decisions not to grant a downward departure sentence for an abuse of discretion. In *Wilson v. State*, 306 So. 3d 1267, 1273 (Fla. 1st DCA 2020), *review granted*, SC20-1870, 2021 WL 1157838 (Fla. Mar. 26, 2021), the First DCA concluded it did not have jurisdiction to review such a sentence where the trial court understood that it had discretion and dismissed the appeal, certifying conflict with the Second DCA's decision in *Barnhill v. State*, 140 So. 3d 1055, 1060 (Fla. 2d DCA 2014), the Fourth DCA's

decision in *Fogarty v. State*, 158 So. 3d 669, 671 (Fla. 4th DCA 2014), and the Fifth DCA's decision in *Kiley v. State*, 273 So. 3d 193, 194 (Fla. 5th DCA 2019) on the issue of whether a DCA can review a trial court's decision not to impose a downward departure.

The Legislature has not changed the law in the decades since *Banks*, indicating its approval. While a State appeal of a downward departure sentence is specifically provided for by statute, a defendant's appeal is not precluded because, in addition to a defendant's right to a direct appeal under the Florida Constitution, which encompasses the judgment and the sentence, Florida Statutes and Rules recognize that a defendant appealing their judgment of conviction can also appeal their sentence.

This Court should hold that DCAs have jurisdiction to review a trial court's decision not to grant a downward departure, quash *Wilson*, and approve the other DCAs' decisions. This Court should remand with instructions for the First DCA to reinstate the appeal as to this argument and conduct the appropriate review under *Banks*.

Argument

I. Whether a district court of appeal has jurisdiction to review a trial court's decision not to grant a downward departure sentence.

A. Preservation and this Court's Jurisdiction

Counsel raised two valid statutory grounds for a downward departure at the sentencing hearing: youthful offender under § 921.0026(2)(*l*), Fla. Stat. (2020) and that Mr. Parrish had a mental disorder unrelated to substance abuse and is amenable to treatment under § 921.0026(2)(d), Fla. Stat. (2020). (R-198, 205) The trial court denied the requests, concluding: "I do not-- despite whether he would qualify as a downward departure or not, I don't believe this is a case where it's appropriate for a downward departure at all. It's not even a close question for me." (R-212)

The pertinent argument on appeal was that the trial court erred in declining to grant a downward departure, acknowledging *Wilson v. State*, 306 So. 3d 1267, 1273 (Fla. 1st DCA 2020), *review granted*, SC20-1870, 2021 WL 1157838 (Fla. Mar. 26, 2021),

which, at the time, was the lead case on this issue.[2] (AP-45) The State did not dispute that this issue was preserved and agreed that *Wilson* controlled. (AP-75-77); Resp. JB p. 7 ("The State therefore did not argue on appeal that Petitioner failed to meet his burden at step 1 [of *Banks*], but argued only that the trial court did not abuse its discretion at step 2.")(footnote omitted).

The First DCA dismissed the appeal as to this issue, citing *Wilson* without further discussion: "Regarding Parrish's claim that the court erred in refusing to impose a departure sentence, this Court has held that it lacks authority to review a sentencing court's decision not to grant a departure sentence. *Wilson*, 306 So. 3d at 1273. Accordingly, we dismiss this portion of Parrish's appeal." *Parrish v. State*, 349 So. 3d 485, 487 (Fla. 1st DCA 2022).

Because *Parrish* was dismissed with a citation to *Wilson*, which certified conflict with other DCAs, this case has express conflict and this Court has jurisdiction. Art. V, §3(b)(3), Fla. Const.; Art. V, §3(b)(4), Fla. Const.; Fla. R. App. P. 9.030(a)(2)(A)(iii). The State agreed that this case "cleanly tees up the issue" of whether a

[2] Oral argument was held in *Wilson* on December 8, 2021, two days before Mr. Parrish's initial brief was filed in the DCA. (AP-18)

DCA can review a trial court's decision not to grant a downward departure under step 2 of *Banks*. Resp. JB p. 5-6.

B. Standard of Review

"The issue of jurisdiction is strictly a legal one. Therefore, this court reviews the trial court's jurisdiction de novo." *Baldwin v. State*, 20 So. 3d 991, 992 (Fla. 1st DCA 2009); *Swearingen v. Villa*, 277 So. 3d 778, 780–81 (Fla. 5th DCA 2019) ("Whether a court has subject matter jurisdiction is [] a question of law reviewed de novo.").

C. Merits

1. The Right to Appeal and District Court Jurisdiction

The Florida Constitution, Florida Statutes, and the Rules of both Criminal and Appellate Procedure establish that sentences are final, appealable orders that defendants have the right to appeal.

a. The Florida Constitution

"Criminal defendants are entitled to a direct appeal as a matter of right in Florida." *Sims v. State*, 998 So. 2d 494, 498 (Fla. 2008). Because the Florida Constitution provides the right to a direct appeal, "the procedures used in deciding appeals must comport with the demands of the Due Process and Equal Protection

Clauses of the Constitution." *Evitts v. Lucey*, 469 U.S. 387, 393 (1985); *see also Griffin v. Illinois*, 351 U.S. 12, 18 (1956) (discussing the importance of appellate review complying with the Due Process Clause when it is "an integral part" of a State's adjudicatory process). Complying with due process necessarily envisions that defendants can challenge their sentence on appeal. *Cromartie v. State*, 70 So. 3d 559, 564 (Fla. 2011) (discussing that due process extends to sentencing).

Direct appeals go to the DCA:

> Under the Florida Constitution, the district courts of appeal 'shall have jurisdiction to hear appeals, that may be taken as a matter of right, from final judgments or orders of trial courts ... not directly appealable to the supreme court or a circuit court.' *See* Art. V, § 4(b)(1), Fla. Const. Article V, section 4(b), grants the district courts jurisdiction to hear criminal appeals and affords criminal defendants a constitutional right to an appeal.

McFadden v. State, 177 So. 3d 562, 566 (Fla. 2015); *see also Amendments to the Florida Rules of Appellate Procedure*, 696 So. 2d 1103, 1104-05 (Fla. 1996).

Wilson fundamentally misunderstood a defendant's right to appeal and the DCA's jurisdiction under the Florida Constitution,

concluding that defendants could not appeal their sentence without additional statutory authorization: "The Legislature has authorized the State to appeal from an order granting a downward departure sentence. But the Legislature has provided no authority for a defendant to appeal from an order denying a downward departure motion." *Wilson*, 306 So. 3d at 1272. A statutory provision specifically providing a defendant the authority to appeal the denial of a downward departure sentence would be unnecessary, as a defendant already has that right under the Florida Constitution.

Judge Tannenbaum recently highlighted problems with *Wilson*'s approach. *Lopez v. State*, 368 So. 3d 1076, 1077 (Fla. 1st DCA 2023) (Tannenbaum, J. dissenting). As Judge Tannenbaum explained, a direct appeal, which is a matter of right, envisions the DCA reviewing both the judgment and sentence, which are final, appealable orders: "if a timely appeal of a circuit court final order is filed with [a DCA], as a constitutional matter, [it has] jurisdiction—regardless of whether there is a statute authorizing it." *Id.* at 1078.

This Court has also recognized that entering a plea waives certain constitutional rights. *Bolware v. State*, 995 So. 2d 268, 272-73 (Fla. 2008); *Robinson v. State*, 373 So. 2d 898, 902 (Fla. 1979)

("Once a defendant enters a plea of guilty, the only points available for an appeal concern actions which took place contemporaneously with the plea" subject to some exceptions); *see also* Fla. R. App. P. 9.140(b)(2)(A) (grounds to appeal from a plea). Although the defendant in *Wilson* pled no contest, 306 So. 3d at 1268, Mr. Parrish went to trial and did not waive any constitutional rights.

b. Florida Statutes

Florida Statutes already provide that defendants may appeal their sentences as a matter of right. § 924.05, Fla. Stat. (2020) ("Direct appeals provided for in this chapter are a matter of right."). Section 924.06, Florida Statutes (2020) also provides that defendants may appeal from a final judgment and an illegal sentence, noting the distinction between the orders: under existing law, a direct appeal encompasses both a judgment and sentence (and other motions filed before the notice of appeal).

c. Florida Rules

The Florida Rules of Criminal Procedure recognize that judgments and sentences are distinct final, appealable orders. Fla. R. Crim. P. 3.650 (defining a judgment as an adjudication of guilt); *but see* Fla. R. Crim. P. 3.670 ("When a judge renders a final

judgment of conviction, withholds adjudication of guilt after a verdict of guilty, **imposes a sentence**, grants probation, or revokes probation, the judge shall forthwith inform the defendant concerning the rights of appeal therefrom.")(emphasis added).

This Court has recognized that a sentence is a final order because an order vacating a sentence is appealable. *Morgan v. State*, 350 So. 3d 712, 716 (Fla. 2022). Notably, the First DCA has dismissed an appeal because the absence of a rendered judgment **and sentence** rendered it premature. *Young v. State*, 306 So. 3d 416 (Fla. 1st DCA 2020).

Florida Rule of Appellate Procedure 9.110(h) makes clear that an appeal from a judgment is plenary: "Except as provided in subdivision (k), the court may review any ruling or matter occurring before filing of the notice. Multiple final orders may be reviewed by a single notice, if the notice is timely filed as to each such order." *See also* Fla. R. App. P. 9.110(i) ("The court must review all rulings and orders appearing in the record necessary to pass on the grounds of an appeal."). A single notice of appeal can also cover multiple judgments. *See Hollimon v. State*, 232 So. 2d 394, 396 (Fla. 1970) ("[A] single notice of appeal will, in a proper case, be sufficient to

confer jurisdiction upon an appellate court to review more than one judgment covered by such notice of appeal.").

This Court has denied certiorari relief because "some [discovery] orders are subject to adequate redress by **plenary appeal from a final judgment**." *Allstate Ins. Co. v. Langston*, 655 So. 2d 91, 94 (Fla. 1995) (emphasis added); *see also Moore v. State*, 135 So. 3d 462, 464 (Fla. 5th DCA 2014) (denying certiorari relief because the error could be corrected on "plenary appeal."). Black's Law Dictionary has defined plenary to mean "full, entire, complete, absolute, perfect, [and] unqualified." *Gore v. Harris*, 772 So. 2d 1243, 1268 (Fla. 2000) (Wells, J., dissenting). Likewise, Merriam-Webster defines plenary as "complete in every respect." *See* Merriam-Webster.com Dictionary, Merriam-Webster, https://www.merriam-webster.com/dictionary/plenary (last visited Oct. 16, 2023). Clearly, the sentence in a criminal case is a final order encompassed by a notice appealing a final judgment in a plenary direct appeal.[3]

[3] Mr. Parrish's notice of appeal referred to both the judgment and sentence (R-160), as did the statement of judicial acts to be reviewed (R-162).

Florida Rule of Appellate Procedure 9.140(b)(1) provides three grounds for a defendant to appeal their sentence: (E) an unlawful or illegal sentence, (F) a sentence, if the appeal is required or permitted by general law, or (G) as otherwise provided by general law.

The other DCAs recognized that they had jurisdiction to review the denial of a downward departure under (E), noting the 1996 amendments to Florida law and the distinction between sentences that are unlawful and illegal by its use of "or." *Barnhill v. State*, 140 So. 3d 1055, 1060 (Fla. 2d DCA 2014) ("[T]here have been innumerable reported cases correcting sentencing errors that rendered a sentence unlawful but not completely illegal."). *Barnhill* noted that its earlier precedent on this issue was inconsistent with subsequent developments from the Legislature and this Court [namely amendments to the Florida Rule of Appellate Procedure 9.140 and *Banks*]. *Barnhill*, *Id.* at 1059-60. The Fourth DCA highlighted *Barnhill*'s rationale and concluded the same, as did the Fifth. *Fogarty*, 158 So. 3d at 670-71; *Kiley*, 273 So. 3d at 194.

Denials of downward departures under step 1 of *Banks* are one example of the distinction between illegal and unlawful

sentences: a trial court refusing to exercise discretion is unlawful, even if the underlying sentence is legal. *See Fraser v. State*, 201 So. 3d 847, 850 (Fla. 4th DCA 2016). Likewise, considering an improper factor can render an otherwise lawful sentence, i.e. one within the guidelines, illegal. *See Norvil v. State*, 191 So. 3d 406, 409 (Fla. 2016) (reversing where the trial court considered a subsequent arrest without conviction during sentencing); *Amendments to Florida Rules of Appellate Procedure*, 827 So. 2d 888, 911 (Fla. 2002)(Court Commentary) ("The reference to unlawful sentences in rule 9.140(b)(1)(D) and (c)(1)(J) means those sentences not meeting the definition of illegal under *Davis v. State*, 661 So. 2d 1193 (Fla. 1995), but, nevertheless, subject to correction on direct appeal.").

With respect to (F), a downward departure is encompassed in the ability to appeal a sentence as permitted under general law. The Second DCA has cited this rule as the basis to determine whether a sentence was vindictive, for example. *Evans v. State*, 280 So. 3d 511, 512 (Fla. 2d DCA 2019).

Finally, (G), general law, serves as a catch-all, which can encompass a review of a sentence to the extent (E) and (F) do not. For example, the Second DCA vacated a restitution order under this

section in an [*Anders v. California*, 386 U.S. 738 (1967)] case when the defendant was not present for the hearing and did not waive his right to be. *Holmes v. State*, 117 So. 3d 447, 447 (Fla. 2d DCA 2013).

More importantly, as discussed above, going to trial does not waive any rights for appeal unless they are not preserved, which is not at issue here because counsel raised specific grounds for a downward departure that were denied on the record. (R-212) Furthermore, the proper procedure if a DCA determines that a sentence is legal is to affirm, not dismiss. *See Leonard v. State*, 760 So. 2d 114, 119 (Fla. 2000) (discussing that appeals without merit should be affirmed).

d. Additional Considerations

Wilson's approach conflates reversible error with jurisdiction. For example, while a claim not being preserved for appeal might preclude granting relief, it does not divest the DCA of jurisdiction. *Hughes v. State*, 22 So. 3d 132, 135 (Fla. 2d DCA 2009) (discussing fundamental error and sentencing in postconviction). This Court has recognized that defendants may challenge their sentences on direct appeal even if they do not dispute their guilt. *Maddox v.*

State, 760 So. 2d 89, 96-97 (Fla. 2000) ("[D]efendants who entered a plea of guilty or nolo contendere without expressly reserving an issue for appellate review may nonetheless raise sentencing errors on direct appeal as recognized in *Robinson* [373 So. 2d at 902].").

An appellate court is also required to review the record for error when appointed counsel does not find any meritorious issues because defendants have the right to appellate review of their judgment and sentence. *See In re Anders Briefs*, 581 So. 2d 149, 150-51 (Fla. 1991); *Clark v. State*, 223 So. 3d 1126, 1127 (Fla. 1st DCA 2017) (striking *Anders* brief and instructing counsel to file a motion to correct sentencing error); *Rashid v. State*, 932 So. 2d 1205, 1206 (Fla. 4th DCA 2006) (reversing after *Anders* brief to strike a prison releasee reoffender designation and minimum mandatory from a sentence).

Finally, dismissal of an appeal is a dramatic use of authority that should be reserved for an appellant's misconduct. *See Griffis v. State*, 759 So 2d 668, 672 n. 14 (Fla. 2000) ("Appellate dismissal should be imposed rarely, for an element of arbitrariness is injected into the criminal justice system whenever the appellate safety net is withdrawn."). There was no such allegation here and the First DCA

should have reviewed this argument on the merits: if there was no error it should affirm, not dismiss. *Leonard*, 760 So. 2d at 119.

2. Downward Departures

Section 921.0026(1), Florida Statutes (2020) permits a trial court to depart from the lowest permissible sentence under the Criminal Punishment Code (CPC) if there are "are circumstances or factors that reasonably justify the downward departure." Subsection (2) of that same statute provides a nonexhaustive list of such grounds. Counsel raised two valid statutory grounds here: youthful offender under § 921.0026(2)(*l*), Fla. Stat. (2020) and that Mr. Parrish had a mental disorder unrelated to substance abuse and is amenable to treatment under § 921.0026(2)(d), Fla. Stat. (2020). (R-198, 205)

In *Banks v. State*, 732 So. 2d 1065, 1067-68 (Fla. 1999), this Court articulated a two-part test for appellate review of a trial court's decision to impose a downward departure: (1) whether it can (i.e. if there is a valid legal basis to do so and competent evidence supports that basis) and (2) whether it should. The second is within the trial court's discretion and will not be reversed absent an abuse of discretion. *Id.* at 1068.

Although an abuse of discretion is a high burden, appellate courts must review the merits. Appellate courts have found an abuse of discretion when sentencing juveniles like Mr. Parrish. *See J.M.H. v. State*, 311 So. 3d 903, 917-18 (Fla. 2d DCA 2020) (finding an abuse of discretion when imposing a life sentence for a juvenile offender on that record); *see also Washington v. State*, 324 So. 3d 31, 31-32 (Fla. 1st DCA 2021)(Makar, J. concurring) (discussing the abuse of discretion standard when reviewing juvenile sentences and affirming that sentence).

The same is true for downward departures: DCAs must conduct a case-specific analysis. *See State v. Gaines*, 971 So. 2d 219, 221 (Fla. 4th DCA 2008) (reversing imposition of downward departure), *State v. Strawser*, 921 So. 3d 705, 708 (Fla. 4th DCA 2006) (affirming imposition of downward departure).

While *Banks* arose out of a State appeal, nothing indicates that its reasoning was limited to State appeals, much less that it envisioned a different standard of review for a defendant's appeal.

As a preliminary matter, "in criminal cases the state has only those rights of appeal as are expressly conferred by statute." *Ramos v. State*, 505 So. 2d 418, 421 (Fla. 1987); *see also Exposito v. State*,

891 So. 2d 525, 528 (Fla. 2004) (discussing limitations of the State's right to appeal); § 924.07, Fla. Stat. (2020) (enumerating grounds for State appeals); Fla. R. App. P. 9.140(c)(1) (same). Although it is not in dispute that the decision to grant a downward departure is one such ground, as discussed above, defendants' appellate rights do not have the same statutory limitations because the Florida Constitution guarantees their right to a plenary direct appeal.

The Legislature is also presumed to be aware of judicial interpretation of statutes. *Malu v. Security Nat. Ins. Co.*, 898 So. 2d 69, 75 (Fla. 2005). *Banks* has been the law for over two decades and the Legislature has passed nothing that indicates its disapproval. *See Goldenberg v. Sawczak*, 791 So. 2d 1078, 1081 (Fla. 2001) ("Long-term legislative inaction after a court construes a statute amounts to legislative acceptance or approval of that judicial construction.").

Even if it had been inclined to do so, the Legislature could not divest DCAs of jurisdiction to review denials of departure sentences. *See State v. Jefferson*, 758 So. 2d 661, 664-65 (Fla. 2000) ("[T]he Florida Constitution does not give the Legislature the authority to

restrict the subject matter jurisdiction of the appellate courts to hear criminal appeals."). Any statutes or rules regulating the constitutional right to appeal "should be liberally construed in favor of the appealing party and in the interest of manifest justice." *McFadden,* 177 So. 3d at 566 (*quoting Robbins v. Cipes*, 181 So. 2d 521, 522 (Fla. 1966)).

This Court would not have articulated a standard of review for step 2 in *Banks* if DCAs were meant to dismiss an appeal for lack of jurisdiction when a defendant appeals a sentence. Mr. Parrish is unaware of any legal issue where the appellate standard of review (as opposed to, say, the burden of persuasion) is contingent on whether the prosecution or defense raises an argument. Such a notion defeats the purpose of having a uniform standard of appeal. *Wilson* provides no support for the notion that this Court or the Legislature intended to completely insulate a trial court's decision not to grant a downward departure from any appellate scrutiny.

3. This Case

The First DCA did not analyze the downward departure in this case beyond saying that it was dismissing the appeal as to that issue with a citation to *Wilson*. *Parrish*, 349 So. 3d at 487. Because

the DCA did not believe it had jurisdiction, it did not consider the merits or review the trial court's decision for an abuse of discretion. This Court should not conduct that analysis in the first instance: the First DCA should conduct that analysis on remand.

This Court need, and should, only answer the question presented regarding the extent of the First DCA's jurisdiction. *See Savoie v. State,* 422 So. 2d 308, 312 (Fla. 1982) ("[O]nce this Court has jurisdiction of a cause, it has jurisdiction to consider ... other issues [that] have been properly briefed and argued **and are dispositive of the case**.") (emphasis added); *Hall v. State,* 752 So. 2d 575, 578 n.2 (Fla. 2000) ("Once we have conflict jurisdiction, we have jurisdiction to decide all issues **necessary** to a full and final resolution.") (emphasis supplied); *see also Debose v. State*, 359 So. 3d 368, 379 (Fla. 1st DCA 2023)(Kelsey, J., dissenting on motion for rehearing) (discussing principles of judicial restraint); *Pagan v. Sarasota County Public Hosp. Bd.*, 884 So. 2d 257, 264 (Fla. 2d DCA 2004) ("It is a long-standing rule of appellate jurisprudence that the appellate court should not undertake to resolve issues which, though of interest to the bench and bar, are not dispositive of the particular case before the court.").

Conclusion

Petitioner requests that this Court quash the First DCA's opinion in *Wilson*, approve the Second DCA's decision in *Barnhill*, the Fourth DCA's decision in *Fogarty*, and the Fifth DCA's decision in *Kiley*. He asks that this Court remand the case to the First DCA with instructions to reinstate the appeal and review the trial court's decision not to grant a downward departure for an abuse of discretion under *Banks*.

Certificates

I hereby certify, pursuant to Florida Rule of Appellate Procedure 9.045, that this brief complies with the applicable font and word-count-limit requirements. I hereby certify that this brief was served, via the Florida Courts E-Filing Portal, on Christopher John Baum, Assistant Attorney General, at Christopher.Baum@myfloridalegal.com, on October 17, 2023.

Respectfully submitted,

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