IN THE SUPREME COURT OF THE STATE OF FLORIDA
CASE NO. SC19-1622
Lower Court Case Nos: 4D18-3255 & 4D18-3257

JUAN C. CASIANO,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

PETITIONER'S BRIEF ON JURISDICTION

On Discretionary Review From a Decision
of the Fourth District Court of Appeal

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STATEMENT OF THE CASE AND FACTS

The facts are found within the four corners of the opinion on review, *Casiano v. State*, 4D18-3255, 2019 WL 4458740 (Fla. 4th DCA Sept. 18, 2019), which is provided as an Appendix to this Brief.

Petitioner Juan Casiano entered a partially negotiated no contest plea to multiple driving offenses, several of which were third-degree felonies. (Slip. Op. 1). Because Petitioner's Criminal Punishment Code scoresheet assessed less than twenty-two total points, the trial court could only impose a prison sentence if there was a finding that Petitioner posed a "danger to the public." *See* § 775.082(10), Fla. Stat. (2018). (Slip. Op. 1). Otherwise, the trial court had to sentence Petitioner to a non-state prison sanction. (Slip. Op. 1).

At the time of Petitioner's sentencing, the trial court was bound by the Fourth District Court of Appeal's decision in *Porter v. State*, 110 So. 3d 962 (Fla. 4th DCA 2013), which rejected the argument that a jury must make the finding that a defendant poses a danger to the public. (Slip. Op. 2). In compliance with *Porter*, the trial court conducted a hearing, found Petitioner to be a danger to the public, and imposed a prison sentence. (Slip. Op. 2).

While Appellant's appeal was pending, this Court decided *Brown v. State*, 260 So. 3d 148 (Fla. 2018). (Slip. Op. 2). There, this Court held that section 775.082(10), Florida Statutes, "violates the Sixth Amendment by requiring the

court rather than the jury to make the finding of dangerousness to the public necessary to increase the statutory maximum nonstate prison sanction to a state prison sentence." *Id*. This Court explained that "for a court to impose any sentence above a nonstate prison sanction when section 775.082(10) applies, a jury must make the dangerousness finding." *Id*. (Slip. Op. 2).

Relying upon *Brown*, Petitioner filed a Florida Rule of Criminal Procedure 3.800(b)(2) motion arguing that the trial court erred when it found he posed a danger to the public. The trial court denied the motion and Petitioner raised the issue on appeal. However, before the Fourth District could rule on the merits, Petitioner completed serving the prison portion of his sentence. (Slip. Op. 2). Petitioner filed notice of his release, but argued that his appeal was not moot because he could be subjected to collateral consequences due to being released from prison rather than the county jail—in particular, he could be subjected to Prison Releasee Reoffender ("PRR") sentencing enhancements. (Slip. Op. 3).

The Fourth District Court of Appeal agreed with the merits of Petitioner's argument, but dismissed the appeal as moot. (Slip. Op. 2). In so ruling, the Fourth District relied upon the First District Court of Appeal's decision in *Woods v. State*, 214 So. 3d 803 (Fla. 1st DCA 2017), which was an en banc per curiam affirmance with a series of concurring and dissenting opinions. (Slip. Op. 2). The Fourth District noted that, amongst the various concurring and dissenting opinions, eight

of the fourteen First District judges found the issue to be moot—though not all of these judges agreed that the appeal should be dismissed. (Slip. Op. 2).

In addition, the Fourth District recognized that the First District Court of Appeal's more recent decision in *Johnson v. State*, 260 So. 3d 502 (Fla. 1st DCA 2018), reached a contrary conclusion on the mootness issue. (Slip. Op. 3). In *Johnson*, the defendant challenged the trial court's finding that he posed a danger to the public; however, he finished serving his prison sentence prior to his appeal being decided. (Slip. Op. 3). The majority of a three-judge panel held that because "adverse legal consequences could befall [the defendant] as a result of his [prison] sentence," the appeal was not moot. (Slip. Op. 3). Judge Rowe dissented and wrote that she would have dismissed the case as moot. (Slip. Op. 3).

The Fourth District "agree[d] with Judge Rowe's [dissenting] opinion in *Johnson* and those of the eight judges on the First District who agreed the appeal in *Woods* was moot." (Slip. Op. 3). In so ruling, the Court "recognize[d Petitioner's] argument that a collateral consequence may flow from his sentence: his potential designation as a prison release reoffender." (Slip. Op. 3). However, the Court would not "assume [Petitioner's] punishment failed to dissuade him from engaging in future qualifying offenses." (Slip. Op. 3). "Nor [did the Court] preclude [Petitioner] from challenging the application of the prison release reoffender statute in any future case in which the State seeks to apply it." (Slip. Op. 3).

SUMMARY OF THE ARGUMENT

This Court should accept jurisdiction to review the instant case for two reasons. First, the Fourth District Court of Appeal's opinion expressly and directly conflicts with a First District Court of Appeal decision on the same issue of law—namely, whether a defendant's release from prison renders moot a challenge to a trial court's erroneous dangerousness finding under section 775.082(10), Florida Statutes. *See Johnson v. State*, 260 So. 3d 502 (Fla. 1st DCA 2018). Second, Petitioner is in the same posture as the defendant in *Booker v. State*, 244 So. 3d 1151 (Fla. 1st DCA 2018), whose appeal is presently pending before this Court. *See Reginald Booker III v. State*, SC18-752.

ARGUMENT

THIS COURT HAS JURISDICTION UNDER ARTICLE V, SECTION 3(B)(3) OF THE FLORIDA CONSTITUTION BECAUSE (1) THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL IS IN EXPRESS AND DIRECT CONFLICT WITH A DECISION OF THE FIRST DISTRICT COURT OF APPEAL AND (2) APPELLANT IS IN THE SAME POSTURE AS A DEFENDANT WHOSE CASE CURRENTLY PENDING BEFORE THIS COURT

I. Jurisdictional Basis

This Court has two jurisdictional bases to accept discretionary review of Petitioner's case. First, the Fourth District Court of Appeal's decision directly and expressly conflict with a decision of the First District Court of Appeal on the same issue of law—namely, whether a defendant's release from prison renders moot a challenge to a trial court's improper dangerousness finding under section 775.082(10), Florida Statutes. *See* Art. V, § 3(b)(3), Fla. Const. Second, Petitioner is in the same posture as the defendant in *Booker v. State*, 244 So. 3d 1151 (Fla. 1st DCA 2018), whose case is presently pending before this Court. *See Reginald Booker III v. State*, SC18-752.

II. Conflict Jurisdiction

The First District Court of Appeal held in *Johnson v. State*, 260 So. 3d 502 (Fla. 1st DCA 2018), that the issue raised by Petitioner is not moot even when a defendant completes his or her prison sentence. When *Johnson* was decided, there was a split of authority amongst the district courts as to whether lengthy county jail

sentences could trigger Prison Releasee Reoffer ("PRR") status. Later, this Court resolved the conflict and held that release from a county jail does not satisfy the PRR requirements. *See State v. Lewars*, 259 So. 3d 793, 802 (Fla. 2018).

The problem in *Johnson* was that the defendant received a prison sentence in excess of a year incarceration, which—under the First District's case law at the time—could qualify him for PRR sentencing enhancements in the future. On appeal, the defendant argued that the trial court's finding that he posed a danger to the public under section 775.082(10) was legally insufficient and not supported by the record. The State argued that the appeal should be dismissed as moot because the defendant had finished serving his term of incarceration.

In a split decision, the majority opinion of the First District remanded the case for resentencing and held that the appeal was not moot. This was because there were collateral consequences that could befall the defendant as a result of receiving a prison sentence. As the majority explained:

> The State contends that the conflict in the appellate courts will have no effect on [the defendant] since he served his term of incarceration not in a county jail but in the Department of Corrections. As [the defendant] argues, however, "[t]he entire point of his appeal is that because on resentencing the trial court imposed an illegal sentence, i.e., 383 days rather than 364 days, or a prison sentence rather than a jail sentence, [he] will be illegally subject in the future to [PRR] classification." Indeed, when asked if the 383 days "Department of Corrections sentence" "would count then as a Department of Corrections release for the purposes of PRR," the trial court replied, "It would." The State does not explain how [the defendant] could have been subject to PRR sentencing in the future had the trial court

> committed him "to the custody of the Alachua County Sheriff's Office, Department of the Jail," which was an option on the scoresheet. Given such, we do not believe that [the defendant's] challenge to the trial court's findings is moot.

Johnson, 260 So. 3d at 505-06.

In a dissenting opinion, Judge Rowe disagreed with the majority and stated she would dismiss the appeal as moot. *Id.* at 509 (Rowe, J., dissenting). "Because [the defendant wa]s not challenging his conviction and ha[d] served his sentence," Judge Rowe stated that the defendant's "challenge to the propriety of the trial court's sentencing decision ha[d] become moot." *Id.* (Rowe, J., dissenting).

Neither the majority nor dissenting opinions in *Johnson* cited to the First District's prior decision in *Woods v. State*, 214 So. 3d 803 (Fla. 1st DCA 2017) (en banc). In that case, the First District Court of Appeal proceeded en banc and issued a per curiam affirmance, with numerous judges writing concurring and dissenting opinions. In a concurring opinion joined by three judges, Judge Makar "agree[d] with the majority of [his] colleagues that [the defendant's] facial challenge to § 775.082(10) should be decided on the merits and not dismissed as moot," explaining that mootness will not destroy an appellate court's jurisdiction to review an issue that is of great public importance or likely to occur. *Id.* at 813 n.7 (Makar, J., concurring). In dissent, Judge Winsor, joined by two judges, stated he would dismiss the appealed as moot. *Id.* at 825-26 (Winsor, J., dissenting).

While persuasive to the Fourth District in deciding Petitioner's case, *Woods*

is not controlling precedent because "a per curiam affirmance without written opinion, even one with a written dissent, has no precedential value and should not be relied on for anything other than res judicata." *St. Fort ex rel. St. Fort v. Post, Buckley, Schuh & Jernigan*, 902 So. 2d 244, 248 (Fla. 4th DCA 2005). Rather, *Johnson* represents the controlling case law for the First District.

In this case, the Fourth District—in dismissing Petitioner's appeal as moot—expressly disagreed with the First District's majority holding in *Johnson* and aligned itself with Judge Rowe's dissenting opinion. Because there is presently conflict among Florida's district courts of appeal as to whether a defendant's release from prison renders moot a challenge to a trial court's erroneous dangerousness finding under section 775.082(10), this Court has jurisdiction under article V, section 3(b)(3) of the Florida Constitution.

III. Jurisdiction Pursuant to Jollie v. State

In *Jollie v. State*, 405 So. 2d 418, 420 (Fla. 1981), this Court held that it has jurisdiction to review cases if the decisions in those cases cite to a case which is pending review in the Supreme Court. *See also Wingfield v. State*, 799 So. 2d 1022, 1024 (Fla. 2001) (Supreme Court has jurisdiction to review case "on the basis of express and direct conflict with the decision in *Grant*, which was pending review by this Court at the time," citing *Jollie*). By so holding, *Jollie* acted to avoid the inherent injustice which occurs when cases involving the same issue are treated

disparately for purposes of discretionary review in this Court depending on whether the case is decided by a written opinion or a simple affirmance.

In April 2019, this Court accepted jurisdiction to review the First District Court of Appeal's decision in *Booker v. State*, 244 So. 3d 1151 (Fla. 1st DCA 2018), *review granted*, SC18-752, 2019 WL 1434049 (Fla. Apr. 1, 2019). The issue in *Booker* concerned what remedy should be provided to defendants when a trial court erroneously imposes a prison sentence based on its own finding under section 775.082(10) that the defendant poses a danger to the public.

Following briefing but before the scheduled oral argument, the defendant in *Booker* filed notice that he had completed his four-year prison sentence. *See Booker v. State*, SC18-752 (Docket Entry on July 23, 2019). Within the notice, the defendant asserted that "[t]he fact that [he] completed his prison sentence before his case could be argued in this Court d[id] not make the issue moot." *Id.* The State, in response, moved to dismiss the appeal as moot. *See Booker v. State*, SC18-752 (Docket Entry on Aug. 29, 2019).

On August 30, 2019, this Court entered an order stating that it would reserve ruling on the State's motion to dismiss. *Booker v. State*, SC18-752 (Docket Entry on August 30, 2019). In addition, this Court's order "request[ed] that the parties be prepared to address the issue of mootness at oral argument . . . . " *Id.*

During oral argument, defense counsel argued the appeal was "not moot just

because [Mr. Booker] completed his four-year prison sentence." Justice Luck questioned counsel about the mootness issue, focusing on the "collateral consequences that would result from having a five year as opposed to" a 364 day sentence in the county jail. Defense counsel responded that, as a result of the prison sentence, the defendant could be subject to, among other things, PRR sanctions. Justice Labarga commented that the PRR statute could apply if the defendant committed an offense within three years of finishing his prison sentence.

The State argued that the appeal had been rendered moot by the defendant's release. In response to the State's argument, Chief Justice Canady asked about the collateral consequences of the prison sanction. Justice Labarga also asked the State about the PRR designation and how the defendant could mitigate the collateral consequences of the prior prison sentence. Justice Lawson commented about how the issue appeared to be capable of repetition but evading review.

As the above demonstrates, Petitioner is in the same posture as the defendant in *Booker*, whose case is currently pending before this Court. Accordingly, this Court should either accept jurisdiction to review Petitioner's appeal or stay Petitioner's case pending disposition of *Booker*.

CONCLUSION

Based on the foregoing arguments and authorities, Petitioner requests that this Court exercise its discretion and accept jurisdiction of this cause for review.

CERTIFICATE OF FONT

I certify that this brief was prepared with 14 point Times New Roman type in compliance with Florida Rule of Appellate Procedure 9.210(a)(2).

/s/ BENJAMIN EISENBERG
BENJAMIN EISENBERG

CERTIFICATE OF SERVICE

I certify that this brief was electronically filed with the Court and a copy of it was served to Rachael Kaiman, Assistant Attorney General, Office of the Attorney General, Ninth Floor, 1515 N. Flagler Drive, West Palm Beach, Florida 33401-3432, by email at CrimAppWPB@MyFloridaLegal.com this 26th day of September, 2019.

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